

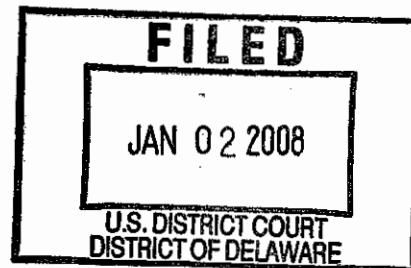
IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF DELAWARE.

HENRY GLANDING  
PETITIONER

07-469

v.

THOMAS CARROLL (WARDEN)  
DEFENDANT



RD scanned

APPENDIX TO ANSWER TO STATES ANSWER  
TO HABEAS CORPUS.

ATTORNEYS LETTERS + SUPREME COURT DOCKETS.  
SUPPRESSION HEARING MOTION AND TRANSCRIPT.  
SOME TRIAL TRANSCRIPTS

12-28-07  
DATED Signed

Henry W Glanding Jr  
HENRY W GLANDING JR  
D.C.C.  
1181 Paddock Rd.  
Smyrna Del. 19977

(A)

DESCRIPTIONSPAGE No<sup>#</sup>

LETTER FROM SUPREME COURT TO MR. SCHMID (ESO)  
WITH INSTRUCTIONS FOR MR. SCHMID TO ADVISE MR. GLANDING  
THAT ALL FUTURE CORRESPONDENCE GO THROUGH HIS ATTORNEY - 1.

SUPREME COURT DOCKET. DOCKET SHOWS TIMELY  
APPEAL, (BY ME) LETTER TO MR. SCHMID DIRECTING HIM TO REC-  
OGNIZE HIS CONTINUING OBLIGATIONS. UP TO WITHDRAW AS  
COUNSEL. OTHER DOCKET INFORMATION! - 2-3.

LETTER FROM MR. MODICA, SHOWING DATE HE WAS  
OBTAINED AS COUNSEL BY ME - 4

MARYLAND STATE'S NOTICE OF NOL. PROS. INFORMANT  
(JAMES PATTERSON) NOT RELIABLE - 5-6.

MOTION FOR SUPPRESSION OF EVIDENCE (FILED BY ME ON 11-10-02) 7-9.

ORDER TO MOTION - CHALLENGING VEHICLE + HOUSE SEARCH ↑ - 10.

NOTICE OF MOTION FILED BY GLANDING - 11.

CERTIFICATE OF SERVICE NOTICE TO - PROTHONOTARY - 12.

CERTIFICATE OF SERVICE NOTICE TO ATTORNEY GENERAL - 13.

CERTIFICATE OF SERVICE NOTICE TO ATTORNEY MR. L. SCHMID - 14

LETTER FROM MR. MODICA PLUS RESULTS FROM ARGUMENTS RAISED - 15

IN-POST CONVICTION - BILL # 164 - BILL # 146 WAS ALSO - 16

SUPPRESSION HEARING MOTION COPIES EXHIBIT PAGES 1-107. 17-43

Supp. HEAR. EXHIBIT Pg. (5) CHALLENGING STOP + SEARCH OF VEHICLE - VAUD PAGE-18

SEARCH WARRANT - ISSUANCE - CIRCUMSTANCES OF TIMING OF  
SEARCH OF RESIDENCE. " "

Supp - HEAR - EXHIBIT Pg (65) REASON FOR SEARCH WARRANT AND  
STATES DAYTIME SEARCH WARRANT - WAS GOING TO EXHIBIT  
AT 10:00 PM. - 33

Supp - HEAR - EXHIBIT Pg (95) ATTORNEY WITHDREW CHALLENGING  
SEARCH WARRANT - INEFFECTIVE COUNSEL - HAVING NO CASE - 40  
LAW

Supp - HEAR - EXHIBIT Pg (10) STATE'S GLANDING DOES "NOT"  
HAVE VIOLENT HISTORY. - 42

TRIAL TRANSCRIPT COPIES 44-61

TRIAL-TRANS; EXHIBIT Pg 127 POLICE TESTIFIED WAS IN  
GLANDING'S HOUSE UNTIL 11:55 PM NIGHT TIME - 51

BOTH TRANSCRIPTS SHOW EVIDENCE USED - STATED

By GLANDING.

SUPREME COURT OF DELAWARE

CATHY L. HOWARD  
Clerk

AUDREY F. BACINO  
Assistant Clerk

DEBORAH L. WEBB  
Chief Deputy Clerk

LISA A. SEMANS  
Senior Court Clerk

October 21, 2002

#21

SUPREME COURT BUILDING  
55 THE GREEN  
P.O. BOX 476  
DOVER, DE 19903  
(302) 739-4155

Lloyd A. Schmid, Jr., Esquire  
Office of the Public Defender  
530 South State Street  
Dover, DE 19901

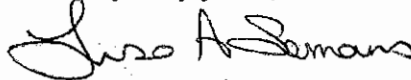
RE: *Henry W. Glanding v. State*, No. 236, 2002

Dear Counselor:

Enclosed is a copy of an Affidavit Requesting to Proceed Pro Se Pursuant to Rule 26(d)(iii) received on October 16, 2002 from Mr. Henry Glanding, in the above-captioned matter. The Court has directed me to provide you with a copy of Mr. Glanding's Affidavit for appropriate disposition. Please contact Mr. Glanding about his concerns and inform him that all future correspondence to the Court on his behalf should be through you as his attorney.

By copy of this letter, I am informing John R. Williams, Esquire of the Department of Justice, of the Court's action regarding Mr. Glanding's document. I am providing Mr. Williams with a copy of Mr. Glanding's document for informational purposes only. Since the appellant's opening brief under Rule 26(c) has previously been filed, the Court will take no further action regarding Mr. Glanding's document.

Very truly yours,



/eas

Enclosure(s)

cc: Mr. Henry Glanding, Jr.  
(with docket sheet)  
John R. Williams, Esquire  
(with copy of Mr. Glanding's affidavit)

236 , 2002

L. A. SCHMID

HENRY GLANDING, JR.,  
Defendant Below,  
Appellant,  
v.

J. R. WILLIAMS

STATE OF DELAWARE,  
Plaintiff Below,  
Appellee.

DF \$ 00.00

2002

- 1 May 02 Notice of appeal from the order dated 4/23/02, in the Superior Court, in and for Kent County, by President Judge Ridgely, in Cr.ID No. 0105009486A, with no designation of transcript. (no service shown) (eas)
- 2 May 02 Letter dated 5/2/02 from Senior Court Clerk to Lloyd A. Schmid, Esquire, directing that he recognize his continuing obligation by 5/13/02. (eas)
- 3 May 13 Letter dated 5/13/02 from Lloyd A. Schmid, Jr., Esquire to Chief Justice and Justices, recognizing his continuing obligation. (eas)
- 4 May 13 Formal notice of appeal from the order dated 4/23/02, in the Superior Court, in and for Kent County, by President Judge Ridgely, in Cr.ID No. 0105009486A. (served by mail 5/13/02) (eas)
- 5 May 13 Directions to court reporter of proceedings below to be transcribed pursuant to Rule 9(e) by appellant. (service shown on court reporter by mail 5/13/02) (eas)
- 6 May 14 Letter dated 5/14/02 from Senior Court Clerk to Jennie Washington, transcript is due to be filed by 6/25/02. (eas)
- 7 Jul 01 Letter dated 7/1/02 from Chief Deputy Clerk to Debbie Burrell, requesting the transcript or an extension request be filed no later than 7/12/02. (dlw)
- 8 Jul 10 Court reporter's final transcript log entry: Prothonotary received 7-3-02. (clh)
- 9 Jul 10 Letter dated 7-10-02 from Clerk to Prothonotary, the record is due to be filed by 7-15-02. (clh)
- 10 Jul 15 Record w/ transcript. (eas)
- 11 Jul 15 Brief schedule issued. (opening brief due 8/14/02) (eas)
- 12 Aug 09 Motion under Rule 15(b) by appellant. (served by hand)

- 13 Aug 12 Order dated 08/09/02 by Walsh, J., appellant's opening brief is due 09/28/02. (mfm)
- 14 Sep 20 Letter dated 9/17/02 from Henry Glanding to Justices, regarding his appeal. (eas)
- 15 Sep 26 Letter dated 9/26/02 from Senior Court Clerk to Lloyd A. Schmid, Jr., Esquire, forwarding Mr. Glanding's letter for appropriate disposition. (eas)
- 16 Sep 27 Motion to withdraw as counsel by Lloyd A. Schmid, Jr., Esquire. (served by hand 9/27/02) (eas)
- 17 Sep 27 Statement by Lloyd A. Schmid, Jr., Esquire. (served by hand 9/27/02) (eas)
- 18 Sep 27 Appellant's opening brief and appendix under Rule 26(c). (served by hand 9/27/02) (eas)
- 19 Oct 07 State's Response to Rule 26(c) Brief. (served by hand 10/7/02) (eas)
- 20 Oct 16 Affidavit Requesting to Proceed Pro Se Pursuant to Rule 26(d) (iii) by Henry Glanding. (eas)
- 21 Oct 21 Letter dated 10/21/02 from Senior Court Clerk to Lloyd A. Schmid, Jr., Esquire, forwarding Mr. Glanding's document for appropriate disposition. (eas)

**MICHAEL W. MODICA**

**ATTORNEY AT LAW**  
**715 N. KING STREET, SUITE 300**  
**P.O. BOX 437**  
**WILMINGTON, DELAWARE 19899**

**TELEPHONE (302) 425-3600**  
**FACSIMILE (302) 425-5712**  
**E-MAIL: MODICALAW@aol.com**

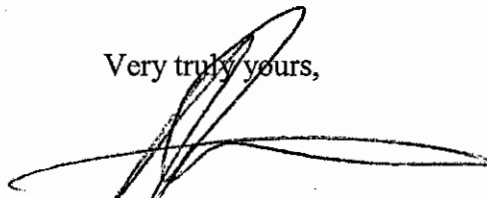
November 24, 2003

Mr. Henry Glanding  
SBI # 132504  
DCC  
1181 Paddock Road  
Smyrna, DE 19977

Dear Henry:

This is to confirm that I have scheduled a visit with you for December 8, 2003 at 9:00 a.m. to discuss your case. Please prepare all paperwork relating to this case so that we can go over it on that date. I look forward to meeting you.

Very truly yours,



Michael W. Modica

MWM/tsw  
cc: Ms. Stacy Redcliffe

I obtained MR. MODICA on this date!



THE CIRCUIT COURT FOR CAROLINE COUNTY, MARYLAND

STATE OF MARYLAND

v.

MICHAEL FRANCIS KELLER

Criminal Case No.5308

STATE OF MARYLAND

v.

CHARLES EDWARD BAKER

Criminal Case No.5309

STATE OF MARYLAND

v.

TIMOTHY WEINS

Criminal Case No. 5331

\*\*\*\*\*

THE DISTRICT COURT OF MARYLAND FOR CAROLINE COUNTY

STATE OF MARYLAND

v.

ROBERT LESLIE BROWN

Criminal Case No. 5J-9364

STATE OF MARYLAND

v.

DARRYL LEON POAFPYBITTY

Criminal Case No. 0J-9366

STATE OF MARYLAND

v.

HENRY GLANDING

Criminal Case No. 0J-8393

STATE'S NOTICE OF NOL PROS

The STATE ATTORNEY'S FOR CAROLINE COUNTY hereby notifies the Courts and all defense counsel that the above-captioned cases are being *nol prossed*. Any unserved warrants in those cases should be recalled. Regarding the *nol prosses*, State's Attorney Robert Greenleaf states:

"Without the presence at trial of James "Chopper" Patterson (the alleged victim), and live credible testimony from him, the law will not allow the State to convict any defendant in these cases. Despite several appointments for meetings at the State's Attorney's Office, the victim has missed all of them, including a fifth and final chance last Thurs., Mar. 21. It has foiled trial preparation. It has prevented the State's Attorney's Office from sizing up the victim, i.e., assessing the credibility of the victim and his allegations of heinous acts."

"The mere hope that the victim might show up for trial is wasteful of the time of hundreds

of potential jurors. And very expensive. Jurors' time is best reserved for those cases ready for trial. Because of the victim, these cases are not ready for trial and it is uncertain when they will be ready. I emphasize the *nol prosses* are through no fault of police or the State's Attorney's Office."

"The State reserves the right to re-institute the cases anytime; meanwhile, the law presumes the defendants innocent of the charges in this matter."

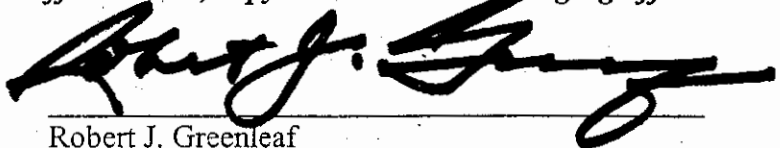
Any prosecutor in the Caroline County State's Attorney's Office is authorized to implement the *nol pros* contemplated in this notice.

Dated: March 25, 2002



Robert J. Greenleaf, State's Attorney  
P.O. Box 59, Denton, MD 21629  
410-479-0255

*Note to Victim-Witness Coordinator: Call off witnesses; copy this to victim & charging officer.*



Robert J. Greenleaf

Certificate of Service

I certify that on March 25, 2002 a copy of the foregoing was mailed, postage prepaid, to:  
Jim Baldwin, Esquire, attorney for Timothy Weins, 120 W. Water St., Centreville, MD 21617;  
Brian Young, attorney for Michael Keller, 5407 Water St., #106, Upper Marlboro, MD 20772;  
C. Thomas Brown, attorney for Charles Edward Baker, 205 E. Main St., Elkton, MD 21921;  
Robert Leslie Brown, defendant pro se, 6801 Old Solomons Island Rd., Friendship, MD 20758;  
Darryl Leon Poafpybitty, defendant pro se, 4169 Cadle Creek Marina, Edgewater, MD 21037;  
and Henry Glanding, defendant pro se, 829 Lion Hope Rd., Clayton, DE 19938.



Robert J. Greenleaf



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

STATE OF DELAWARE

V.

HENRY W. GLANDING Jr.

Defendant

CR. A. NO:

IK01-05-0531-0557

ID. NO: 0105009486

**MOTION FOR SUPPRESSION OF EVIDENCE**

NOW COMES the defendant, HENRY W. GLANDING JR and respectively requests that this Honorable Court review the Affidavit of Probable Cause and Search Warrants in this case and dismiss any and all Illegally Obtained Evidence.

In support of this motion, the following is asserted.

1) On May 11TH, 2001, defendant's 1986 Dodge Ram vehicle was rammed from behind by the Delaware State Police, as stated defendant was under a drug related investigation and was known to be wanted out of the District Court of Maryland for Caroline County.

A) Trooper Michael W. Calloway's claim that a drug related investigation was being conducted on the defendant is an after the fact claim, a post-ram/stop and apprehension of the defendant on the basis of outstanding warrants that an illegal search (without consent or warrant) of defendant's vehicle revealed alleged narcotic's and firearm.

B) The District Court of Maryland for Caroline County denies having warrant's on defendant.

2) The finding's within the defendants vehicle, as stated, lead to the execution of a search warrant on the defendants residence located at 829 Lion Hope Road, Clayton, Delaware, 19938.

A) Trooper Michael W. Calloway states the execution of a search warrant, however, due to one not being presented or seen there is the question of the existence of a valid search warrant.

3) Affidavit of Probable Cause

A) Trooper Michael W. Calloway prepared an Affidavit of Probable Cause stating the alleged facts surrounding this incident of May 11TH, 2001. However, this Affidavit completely lacks his signature under oath, but more importantly, it lacks the signature of a Judge-Master-Commissioner-Court

(continued)

Official and the seal of the Court.

**Grounds and Allegations set forth thus far:**

A) The lack of probable cause to ram/stop the defendants vehicle.

B) The Unconstitutional Search and Seizure conducted upon the defendants vehicle supplied poisonous fruit that led to the illegal non-consenting questionable execution of a valid search warrant on defendants residence.

- Although the procedure may seem a mere formality to those whose everyday job it is to obtain them, the failure to obtain a warrant in the absence of exigent circumstances is inexcusable. *Ceroni V. State*, 559 N.E.2d 372, 374-75 (IND. CT. APP. 1990)

- No exigency existed where there was ample time to obtain a warrant, no necessity to enter the vehicle or premises to prevent the destruction of evidence, and where police investigative strategy created exigency. *United States V. Duchi* 906 F.2d 1278, 1281-85 (8TH Cir. 1990); *United States V. Radka* 904 F.2d 357, 360-63 (6TH Cir. 1990); *United States V. Suarez* 902 F.2d 1466, 1467-68 (9TH Cir. 1990); *Finch V. State* 592 P.2d 1196, 1198 (Alaska 1979); *People V. Robinson* 534 N.Y.S. 2d 267, 268 (A.D. 1988)

- A search warrant provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime.

C) Items seized not supported by legitimate Affidavit of Probable Cause. *Weeks V. United States* 232 U.S. 383 (1914) 367 U.S. at 655. *Mapp V. Ohio* 367 U.S. 643 (1961)

- A false Affidavit generally renders a Search Warrant invalid and the fruits of any search made pursuant to it are generally suppressible.

- A Magistrate or Judge in issuing a warrant was misled by information in an Affidavit that the Affiant knew was false or would have known was false except for his reckless disregard of the truth.

IN CONCLUSION, this Motion clearly portrays the lack of Probable Cause, Unconstitutional Search and Seizures, and Deliberate Reckless Disregard of the Truth.

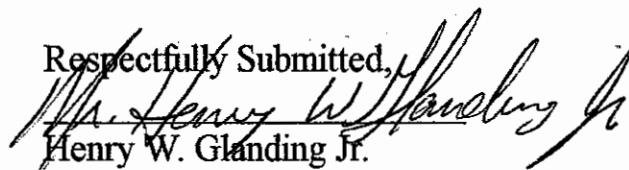
WHEREFORE, the Defendant prays that this Honorable Court suppress the unconstitutionally collected evidence and relating indictments

(continued)

with prejudice.

I SOLEMLY DECLARE AND AFFIRM UNDER THE PENALTIES  
OF PERJURY THAT THE INFORMATION PROVIDED HEREIN IS  
TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE,  
INFORMATION, AND BELIEF.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Mr. Henry W. Glanding Jr.", written over a horizontal line.

Henry W. Glanding Jr.

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

HENRY W. GLANDING JR.

PLAINTIFF

V.

STATE OF DELAWARE

DEFENDANT

CR. A. NO:

IK01-05-0531-0557

I.D. NO: 0105009486

**ORDER**

IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2001  
that the attached Motion for Suppression Of Evidence has been read and  
considered.

IT IS ORDERED that the Motion is hereby GRANTED/DENIED.

IT IS FURTHER ORDERED THAT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY**

STATE OF DELAWARE

V.

HENRY W. GLANDING Jr.

Defendant

CRIMINAL ACTION NO:

IK01-05-0531-0557

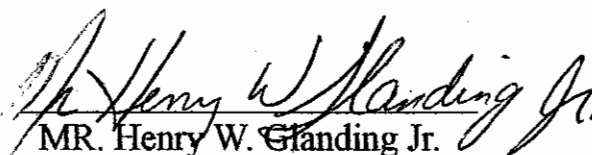
ID NO: 0105009486

**NOTICE OF MOTION**

PLEASE TAKE NOTICE, that the enclosed MOTION FOR  
SUPPRESSION OF EVIDENCE will be presented to this Honorable Court at  
the earliest possible convenience.

November 10TH, 2001

Date



MR. Henry W. Glanding Jr.

S.B.I.# 00132504

Delaware Correctional Center

1181 Paddock Road

Smyrna, Delaware 19977

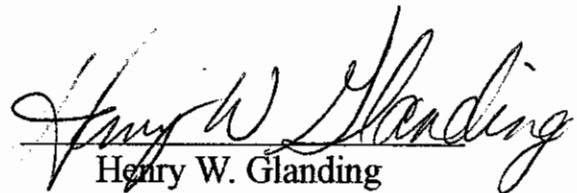
### CERTIFICATE OF SERVICE

I, Henry W. Glanding Jr. hereby certify that I have served a true and correct copy of the attached: "Motion for Suppression of Evidence" upon the following person:

TO: Prothonotary of the Superior Court  
Kent County Courthouse  
38 The Green  
Dover, Delaware, 19901

By placing same in sealed envelope and depositing same in the United States mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware, 19977; postage paid by petitioner.

On this 10th day of November, 2001.

  
Henry W. Glanding



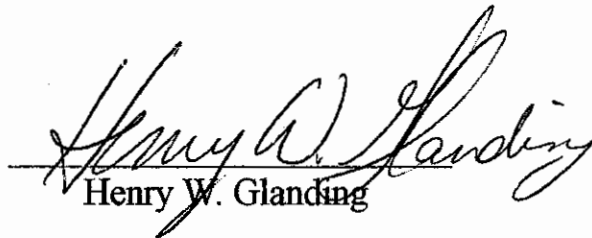
### **CERTIFICATE OF SERVICE**

I, Henry W. Glanding Jr. hereby certify that I have served a true and correct copy of the attached: "Motion for Suppression of Evidence" upon the following person:

TO: Office of the Attorney General  
Department of Justice  
102 W. Water St.  
Dover, Delaware, 19901

By placing same in sealed envelope and depositing same in the United States mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware, 19977; postage paid by petitioner.

On this 10th day of November, 2001.

  
Henry W. Glanding

sent to: Prothonotary's  
Office

### CERTIFICATE OF SERVICE

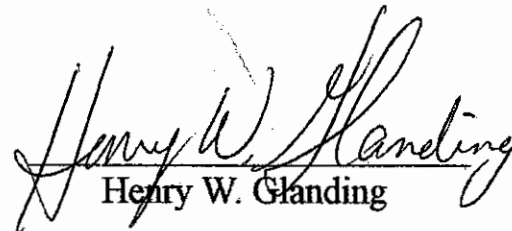
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Department of Justice  
102 W. Water St.  
Dover, Delaware, 19901

TO: Prothonotary of the Superior Court  
Kent County Courthouse  
38 The Green  
Dover, Delaware, 19901

By placing same in sealed envelope and depositing same in the United States mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, Delaware, 19977; postage paid by petitioner.

On this 10th day of November, 2001.

  
Henry W. Glanding

Lloyd A. Schmid Jr  
OFFICE OF THE PUBLIC DEFENDERS  
530 SOUTH STATE STREET  
DOVER DEL. 19901

**MICHAEL W. MODICA**

**ATTORNEY AT LAW  
715 N. KING STREET, SUITE 300  
P.O. BOX 437  
WILMINGTON, DELAWARE 19899**

**TELEPHONE (302) 425-3600  
FACSIMILE (302) 425-5712  
E-MAIL: MODICALAW@AOL.COM**

July 29, 2005

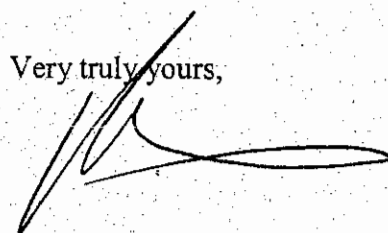
Mr. Henry Glanding  
SBI #132504  
Delaware Correctional Center  
1181 Paddock Rd.  
Smyrna, DE 19977

Dear Henry:

Enclosed please find proposed legislation to clear any confusion regarding the meaning of the term "possession" for purposes of the offense of Possession of a Deadly Weapon by Person Prohibited. This legislation was clearly the result of the issue raised in your appeal. This is for your information.

I am waiting for Judge Vaughn to rule on the Commissioner's proposed decision. I will let you know as soon as a decision is issued.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Michael W. Modica', written over the closing 'Very truly yours,'.

Michael W. Modica

MWM/tss

2-Copies

# State of Delaware

The Official Website for the First State

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## General Assembly

[Back](#)

### 143rd General Assembly House Bill # 164

**Primary Sponsor:** Schwartzkopf

**CoSponsors:** Reps. Buckworth, DiPinto, Ewrig, Hudson, Keeley, Lee, Spence, Williams; Sens. Adams, Blevins, Bunting, Simpson, Vaughn

**Introduced on:** 05/04/2005

**Long Title:** → AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POSSESSION OF WEAPONS. ↗

**Synopsis:** This Act adds clarity to the sections of the Delaware Criminal Code that prohibit certain persons from possessing firearms or ammunition or that prohibit the possession of certain types of weapons, such as sawed-off shotguns. The definition of "possession" adopted by the Act is consistent with the definition used in the Delaware Code for other types of contraband.

There has been inconsistency and overlap in the use of these definitions in cases involving possession of firearms during the commission of a felony and cases of possession or control by persons legally prohibited from doing so. This Act will alleviate this problem. The Act will not ease the requirement that in the prosecution of the former there must be sufficient evidence of more ready accessibility of a deadly weapon during the commission of a crime. However, in the latter type of case, in which the offense alleged is that a person specifically prohibited by law had control of a firearm, the possession element will be defined as it is with other illegal contraband. The same definition of possession will also be applicable to cases where possession of a weapon involved is illegal per se.

The Act also corrects a drafting error in the statute prohibiting possession of weapons with altered serial numbers.

**Current Status:** Stricken On 05/10/2005

**Fiscal Note:** Not Required

**Full text of Legislation:** [Legis.html](#)  
 (in HTML format)

**Full text of Legislation:** [Legis.Doc](#) (You need Microsoft Word to see this document.)  
 (in MS Word format)

#### Actions History:

May 10, 2005 - Stricken  
 May 04, 2005 - Introduced and Assigned to Judiciary Committee in House ↗

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IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

STATE OF DELAWARE ) C.A. No. 1K01-10-0159  
 ) through 0173  
 vs. )  
 HENRY W. GLANDING, JR., ) Appeal No. 236, 2002  
 I.D. No. 0105009486A )  
 Defendant. ) Suppression Hearing  
 ) March 4, 2002

\*\*\*\*\*

BEFORE: HON. HENRY DUPONT RIDGELY, PRESIDENT JUDGE

\*\*\*\*\*

APPEARANCES:

MARTIN B. O'CONNOR, ESQUIRE  
 Deputy Attorney General  
 on behalf of the State of Delaware.

LLOYD A. SCHMID, ESQUIRE  
 Assistant Public Defender  
 Attorney for Defendant.

TRANSCRIPT OF SUPPRESSION HEARING  
 Volume A  
 Monday, March 4, 2002

SHEILA A. DOUGHERTY  
 Official Court Reporter

SHEILA A. DOUGHERTY  
 Official Court Reporter

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SHEILA A. DOUGHERTY  
 Official Court Reporter

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4 and 5	76	
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DEFENDANT'S EXHIBITS:		
A	17	

SHEILA A. DOUGHERTY  
 Official Court Reporter

Courtroom No. 2  
 March 4, 2002  
 1:00 p.m.

PRESENT: As noted.

\*\*\*\*\*

MR. O'CONNOR: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. O'CONNOR: Your Honor, the State has what I believe to be necessary witnesses here and is ready to proceed.

THE COURT: All right. State the basis for your motion, Mr. Schmid.

MR. SCHMID: Thank you, Your Honor.

It is my understanding that on May 11 of last year Mr. Glanding was stopped by the police in a manner involving striking his truck with a car in order to stop the -- physically stop the vehicle so it could not move. They then dragged him out of the driver's side window of the vehicle, didn't open the -- didn't allow him an opportunity to leave on his own, didn't draw their guns, point them at him and make him sit there, and then conducted a warrantless search of the vehicle. They did this on the asserted basis of having knowledge of arrest

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1 warrants in Maryland.

2 We challenge the search of the vehicle on  
3 that basis. It is our understanding that a weapon  
4 and small quantity of methamphetamines were  
5 discovered, not in plain sight, in the vehicle, not  
6 directly on his person.

7 In addition, Your Honor, there was a  
8 search made of his residence, and we challenge the  
9 valid issuance or the circumstances of the issuance  
10 of the search warrant in relation to the timing of  
11 the search of the residence and assert that the  
12 State did not have a legitimate finding of probable  
13 cause to search made by a neutral judicial officer  
14 at the time that they conducted the search.

15 THE COURT: All right. Mr. O'Connor.

16 MR. O'CONNOR: Thank you, Your Honor.  
17 Just briefly.

18 Your Honor, the State intends to present  
19 evidence that the state police earlier in the day on  
20 May 11, 2001 had received information that the  
21 defendant was wanted out of the State of Maryland  
22 for several felony offenses. They also had  
23 information that the defendant was known to carry a

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1 firearm and had made statements which are listed in  
2 the search warrant signed by this Court that the  
3 defendant, if stopped by the police, would kill the  
4 officer and dispose of the body.

5 Subsequent to that information, the State  
6 Police had two sniper slash surveillance people in  
7 the front and rear of the defendant's residence in  
8 the woods. They observed the defendant that  
9 afternoon with a handgun on his right hip, with a  
10 black holster with a brown wooden handle, confirming  
11 the fear that the defendant was armed. They  
12 observed him going back and forth from his house and  
13 doing some yard work.

14 At approximately 1:30 in the afternoon the  
15 Maryland warrant was issued. The testimony will  
16 show that between 3:00 and 4:00 p.m. Detective  
17 Calloway, who is seated to my right, and Detective  
18 Boulerville appeared before Judge Vaughn with a search  
19 warrant for the defendant's residence. The search  
20 warrant for the residence does not in any way rely  
21 on any of the Maryland warrant information, and in  
22 fact the State Police is independent from it. After  
23 reviewing the probable cause in that warrant, Judge

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1 Vaughn signed the search warrant and sealed it for  
2 30 days.

3 Subsequently Detective Calloway and  
4 Detective Boulerville left the courthouse and  
5 responded to a staging area which was the State  
6 Police fire range. At that time they briefed  
7 everyone involved in the stop of the defendant and  
8 the search of the residence of not only the  
9 defendant, his history, but his present  
10 dangerousness.

11 Subsequently the car was stopped at  
12 approximately 8:29 p.m. pursuant to the arrest  
13 warrant from the State of Maryland. At  
14 approximately 8:40 or 8:50 p.m. that evening, the  
15 police then executed the search warrant on the  
16 defendant's residence.

17 It is the State's position that the stop  
18 of the vehicle was valid and that it was a felony  
19 stop pursuant to a valid warrant from the State of  
20 Maryland, that the search of the vehicle was valid  
21 either because it was incident to arrest, or that it  
22 fits the automobile exception, or that it was an  
23 inventory search of the vehicle subsequent to his

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1 apprehension, and the State does not find any fault  
2 in the timing of the search warrant and the  
3 residence, and therefore believes that all of the  
4 evidence seized from the defendant and his vehicle  
5 and from his residence that day should not be  
6 suppressed, and that the police in fact did not  
7 violate the defendant's Fourth Amendment rights.

8 THE COURT: All right. You may call your  
9 witness.

10 MR. O'CONNOR: The State first calls  
11 Corporal Rodney Layfield.

12 THE COURT: Do you have a copy,  
13 Mr. O'Connor, of the application and warrant, and  
14 can counsel stipulate to that admission so I can  
15 have that?

16 MR. O'CONNOR: The Maryland warrant or the  
17 State of Delaware warrant?

18 THE COURT: I am talking about the search  
19 warrant that Judge Vaughn signed.

20 Swear the witness.  
21  
22  
23

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SEARCH WARRANT WAS  
CHALLENGED

Not  
Maryland

WENT INTO NIGHTTIME  
WARRANTLESS SEARCH.

ENTERED MY  
HOUSE  
9:00 TO 9:30 PM  
FROM  
Maryland



Rodney Layfield - Direct

Rodney Layfield - Direct

\*\*\*\*\*  
RODNEY LAYFIELD  
\*\*\*\*\*

called as a witness on the part and behalf  
of the State, being duly sworn, was  
examined and testified as follows:

MR. SCHMID: Your Honor, with respect to  
the Court's request, I stipulate that that is a copy  
of the document that I have been provided by the  
State.

MR. O'CONNOR: If I can pass it to Your  
Honor.

THE COURT: All right. Hand it to the  
clerk. It will be marked as a State's Exhibit.

THE CLERK: Marked as State's Exhibit 1.

THE COURT: Mr. O'Connor.

MR. O'CONNOR: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. O'CONNOR:

Q. Corporal Layfield, how long have you been  
employed by Delaware State Police?

A. I have been employed with Delaware State  
Police for approximately eight years.

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Q. Can you please tell Judge Ridgely briefly  
what your current assignment is?

A. My current assignment now is a detective  
with the Governor's Task Force in Sussex County, and  
in addition to that as my regular assignment I am  
currently a scout observer for the Special  
Operations Response Team. Basically that is the  
name for a sniper.

Q. Have you received any particularized  
training in observation or sniper activity?

A. Yes, I have. Basic course was a  
three-week course. I received the advanced course  
and several other additional courses in shooting,  
but also as an intelligence gathering operations.

Q. Were you working on May 11, 2001?

A. Yes, sir, I was.

Q. Can you tell Judge Ridgely where you were  
on that day?

A. I was in a position behind a residence,  
approximately 180 yards behind it, and I was in the  
western part of Kent County, an area I am not really  
familiar with.

Q. Was it on Lion Hope Road?

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Official Court Reporter

Rodney Layfield - Direct

11

A. Yes.

Q. When were you deployed to that location?

A. Earlier on the afternoon of I believe it  
was May 11. Is that the correct --

Q. That's correct.

A. Earlier that afternoon. I am not sure of  
the exact time, but I believe we were put in  
position around one o'clock or so that afternoon.

Q. Were you -- prior to being deployed there,  
were you briefed about the defendant or his  
activities? What did you know about him?

A. Yes, we were. We were basically briefed.  
We were provided a picture. We were basically told  
of an incident that occurred involving the subject.  
We were given his name, a physical description, and  
also the residence at hand, and we were explained  
that he was wanted I believe out of the state of  
Maryland at that time.

Q. Did you at any point during your  
observation see the defendant?

A. Yes, we did.

Q. Can you explain to the Judge what you saw?

A. Basically what I was observing was the

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Official Court Reporter

Rodney Layfield - Direct

12

back of the residence. I was unable to see anything  
directly in front of the residence. From my angle I  
could kind of see one side of the house, but  
basically I was observing the back of the house.

I observed him in the back yard on  
throughout the afternoon. It appeared to me that he  
was tending to his garden. I observed him with a  
hoe, and a rake, in the back yard. I even observed  
him put up tomato cages or tomato stands in the back  
yard, it appeared to me. He was doing a lot of yard  
work.

I even observed him walking around the  
back yard with a fish in his hands, and while he was  
doing this, he was clothed with denim shorts. It  
appeared like he had blue jean shorts on. He was  
not wearing a shirt. He was observed with what I  
would -- what appeared to me to be a pistol on his  
right hip. It was a black holster, and from my view  
it was a larger item on his waist. It appeared to  
me as if it was a pistol in a black holster. It  
even kind of pulled down on his shorts a little bit  
to cant his waistline on his opposite side hip.

I observed a knife. He was in the yard

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Rodney Layfield - Direct

1 for over -- I would say over an hour. Break time,  
 2 maybe 15 minutes, he would go around to the front,  
 3 maybe half hour in the back yard. Throughout this I  
 4 was trying to concentrate on exactly what was on his  
 5 hip, and it clearly appeared to me to be a pistol in  
 6 a darker black holster.

7 Q. What is it that makes you think it was a  
 8 pistol as opposed to another knife on his hip?

9 A. The sheer size of it. On his left hip I  
 10 was able to see a small like a sheath for a knife.  
 11 But on the right side of his hip it was large,  
 12 covered a larger area of the hip. Also it appeared  
 13 that the handle of the weapon was up around the  
 14 waistline, above the belt line.

15 Normally if a belt is worn -- I happen to  
 16 wear a Leatherman or knife on occasion when I am not  
 17 working, and that fits around the belt line, doesn't  
 18 protrude much higher than the area of a belt loop on  
 19 the sheath, whereas a pistol is worn about mid  
 20 pistol depth with the belt line where the grip is up  
 21 above the waistline, and I could clearly see the  
 22 line of this indicating that it was a pistol rather  
 23 than a knife.

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 Official Court Reporter

14

Rodney Layfield - Direct

1 Q. Had you been informed when you saw it,  
 2 prior to seeing this, that the defendant was a  
 3 convicted felon?

4 A. Yes.

5 Q. How long were you out there?

6 A. We were out there earlier that  
 7 afternoon -- I am going to approximate around  
 8 one o'clock -- and I was aware that the vehicle left  
 9 approximately 2030, about 8:30. When the team came  
 10 to the residence earlier -- or later that evening,  
 11 that was when I was extracted. So I am going to say  
 12 I was surveilling him for upwards to seven hours,  
 13 the back yard, maybe a little less, getting into  
 14 position. I was out there a total of probably eight  
 15 hours approximately.

16 Q. Was anybody with you?

17 A. Yes. I was assisted by Corporal Todd  
 18 Thomas. We deployed two people in the woods at a  
 19 time. I was a surveillance position of the back,  
 20 also there was a surveillance position on the front  
 21 of the house across the street, and that was two  
 22 other detectives, a Detective Corporal John Piser  
 23 and also Corporal Darren Short.

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 Official Court Reporter

20

15

Rodney Layfield - Direct

1 MR. O'CONNOR: No further questions for  
 2 this witness.

3 THE COURT: You may cross-examine.

4 CROSS-EXAMINATION

5 BY MR. SCHMID:

6 Q. Is it Lightfield?

7 A. Layfield. L-A-Y-F-I-E-L-D.

8 Q. Officer Layfield, you were deployed across  
 9 the line in Maryland, weren't you?

10 A. I believe we were close to the Maryland  
 11 line. If we may have been deployed in Maryland, I  
 12 am not totally aware of that, sir.

13 Q. All right. How many males did you see in  
 14 that area, while male subject?

15 A. That day?

16 Q. Yes.

17 A. One.

18 Q. One. Okay. You indicated that he was in  
 19 the yard for over an hour. Can you tell the Court  
 20 what time it was that you observed him in the yard?

21 A. I seem to think the most activity was  
 22 between four o'clock and eight o'clock.

23 Q. When you saw him for approximately an

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 Official Court Reporter

Rodney Layfield - Cross

16

Rodney Layfield - Cross

17

1 hour, was your testimony doing yard work?

2 A. At least an hour consistently he was in my  
3 view. He was outside of the residence off and on  
4 for I would say approximately a three-hour period.  
5 I am not sure, because I didn't document time.  
6 Trying to recall, but there was approximately a  
7 three-hour period where he was in and out and around  
8 the house and directly in my view in the back yard.  
9 I had observation for him for at least an hour, I  
10 would say, directly in my view.

11 Q. You didn't see him leave the residence at  
12 any time while you were there surveilling him for  
13 that seven-hour period?

14 A. I was aware of the surveillance that was  
15 going on in front of the residence by the other  
16 snipers that were in position.

17 Q. My question is: From the 13 --  
18 approximately 1300 time when you were inserted until  
19 you finished your surveillance, approximately seven  
20 hours later, you did not see him leaving the  
21 residence during any of that period of time. I am  
22 talking about leave his yard, drive off; correct?

23 A. At the end of my surveillance at

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1 approximately 8:30 or so, I was aware of a vehicle  
2 that left the front of the residence. My view only  
3 indicated that a vehicle left the residence.

4 Q. Okay. Now, you indicated that he was  
5 wearing shorts, no shirt?

6 A. Correct. When he was doing garden work,  
7 sir.

8 MR. SCHMID: Your Honor, I have shown the  
9 photograph that I would like the officer to look at.  
10 I would like to have an item marked for  
11 identification. I am showing that to Mr. O'Connor.

12 THE COURT: Hand it to the clerk and mark  
13 it for identification.

14 THE CLERK: It has been marked as Defense  
15 Identification A.

16 (Defendant's Exhibit A marked for  
17 identification.)

18 MR. SCHMID: Approach the witness, Your  
19 Honor?

20 THE COURT: Yes.

21 BY MR. SCHMID:

22 Q. I show you a photograph marked Defense for  
23 Identification A and ask what you -- if that

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Official Court Reporter

Rodney Layfield - Cross

18

Rodney Layfield - Cross

19

1 photograph in any way depicts what you saw on that  
2 day, an individual without a shirt on, with  
3 something on his belt?

4 A. It appears to be an individual without a  
5 shirt on, and he has blue jeans on, and he has a  
6 dark item -- from the picture itself, it appears to  
7 be a holster or a sheath for a knife. And the only  
8 reason why I would judge it that way is I can  
9 clearly see a silver metal button on it.

10 This is different than what I observed  
11 from my position, I believe. I cannot see, as I  
12 described earlier, the handle of a pistol. What I  
13 see here is it appears to be a sheath of a knife on  
14 the right hip of this subject.

15 Q. You were approximately 180 yards away, you  
16 said?

17 A. Yes, sir.

18 Q. That's an approximation, right?

19 A. Yes, sir.

20 Q. Could have been further away?

21 A. I would say my range estimating, I am  
22 within 20 yards at the worst case.

23 Q. So would have been 140 yards away? You

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Official Court Reporter

1 said you are within 20 yards.

2 A. Yes, sir.

3 Q. So in other words, if you say you were 120  
4 yards away, and you are off by perhaps 20 at the  
5 most, you just said you could have been off by as  
6 much as 20 yards?

7 A. I believe I said I was about 180 yards.

8 Q. I am sorry?

9 A. Plus or minus 20 would be from 160 to 200.

10 Q. Exactly. I am sorry.

11 A. Yes, sir.

12 Q. Thank you. And you were observing the  
13 individual at this residence by what means?

14 A. I was aided by ocular device, and it was  
15 powered up to ten power.

16 Q. Okay. Now, that --

17 MR. SCHMID: May I retrieve the  
18 photograph, Your Honor?

19 THE COURT: Yes.

20 BY MR. SCHMID:

21 Q. At ten power at 200 -- 180 to 200 yards  
22 away, your sight picture would have shown an  
23 individual smaller than what is depicted in this

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Official Court Reporter

Rodney Layfield - Cross

Rodney Layfield - Cross

1 photograph, correct?

2 Do you need to see that again? I am

3 sorry.

4 A. I would say I can't judge the size of what

5 I view at 200 yards with ten power versus that

6 picture, but I can -- if I can explain, my view

7 would be a consistent view like a video camera or

8 live action where I can catch different angles to be

9 able to depict an item, whereas that picture just

10 gives me one view that I can't really scan or get a

11 3-D look, and that inhibits me from observing what

12 is on that hip or describing what is on that hip.

13 Q. Of course, except that when you are lying

14 like it was a sight or spotting scope. Which was

15 it?

16 A. A scope, sir.

17 Q. On the rifle itself?

18 A. Yes, sir.

19 Q. So you were looking through a rifle scope

20 at ten power?

21 A. Yes, sir.

22 Q. What is the highest power that the scope

23 would go up to?

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Official Court Reporter

1 A. It is a three by ten scope.

2 Q. The highest was ten?

3 A. Yes, sir.

4 Q. You hit at the highest, and this scope

5 does not give you what one might call a crystal

6 clear picture at ten power; correct? At a distance

7 of 200 yards?

8 A. It is a clear view. I am not sure of your

9 definition of crystal clear, but it is a scope that

10 we use and is highly rated among scopes. It is a

11 Leopold scope, which is high quality, and it gives a

12 clear image, as clear as possible, on ten power at

13 that distance.

14 Q. Your assertion is that you cannot say

15 whether the size of the man that you were looking at

16 in the scope would have been smaller than what you

17 saw in this photograph?

18 A. I am unable to compare my view through the

19 scope to that picture, sir.

20 Q. What was the weather like that day?

21 A. Extremely hot, and mosquitoes from my

22 position were terrible.

23 Q. How was the lighting? Was it cloudy? Was

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Official Court Reporter

Rodney Layfield - Cross

22

1 it --

2 A. There was enough light for me to clearly

3 see his residence. I don't recall it raining at all

4 that day. I don't recall any bad weather that day

5 per se. Nothing inhibited my view. I can't tell

6 you exactly the weather. It is not fresh in my

7 mind. It was a warm day, and it was clear view.

8 MR. SCHMID: Okay. Nothing further, Your

9 Honor.

10 THE COURT: Mr. O'Connor.

11 REDIRECT EXAMINATION

12 BY MR. O'CONNOR:

13 Q. You indicated to Mr. Schmid that he asked

14 you a question whether the defendant had left his

15 residence at some point while you were watching?

16 A. Yes.

17 Q. Did you have a clear view of the front of

18 the residence?

19 A. I did not.

20 Q. Is that why you don't know what he was

21 doing out front?

22 A. With my view, I am able to tell you that I

23 believe what occurred because I was able to hear the

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Official Court Reporter

22

Rodney Layfield - Redirect

23

1 transmissions of the radios through the other guys

2 and the direction of travel I saw the subject walk.

3 However, I did not clearly see him get in the

4 vehicle and leave from my vantage point.

5 Q. And that was around 8:40 p.m.?

6 A. Yes.

7 Q. What was the lighting like at that point?

8 A. It was starting to get -- it was starting

9 to get darker that evening.

10 MR. O'CONNOR: No further questions.

11 MR. SCHMID: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you, Your Honor.

14 (The witness stepped down.)

15 MR. O'CONNOR: State calls Detective

16 Darren Short.

17 \* \* \* \* \*

18 DARREN SHORT

19 \* \* \* \* \*

20 called as a witness on the part and behalf

21 of the State, being duly sworn, was

22 examined and testified as follows:

23

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Official Court Reporter



Darren Short - Direct

Darren Short - Direct

## DIRECT EXAMINATION

BY MR. O'CONNOR:

Q. Good afternoon, Detective Short.

A. Afternoon.

Q. Detective Short, how long have you worked for Delaware State Police?

A. Approximately eight and a half years.

Q. What is your current assignment?

A. Currently assigned to the Special Investigations Unit of the Delaware State Police, and also as a sniper observer for the Delaware State Police Special Operations Response Team.

Q. Have you received any particular training in sniper observation work with respect to your SORT group?

A. Yes. I have attended both basic and advanced schools in sniper observing.

Q. Were you working on May 11, 2001?

A. Yes, I was.

Q. What was your assignment that day?

A. I was assigned as a sniper to set up surveillance on a residence and observed the actions of Henry Glanding prior to a search warrant being

executed on the residence.

Q. Who were you working with that day?

A. Corporal John Piser.

Q. Where were you located in relation to the defendant's house?

A. I was straight off his front door in a woodline across the field.

Q. Approximately how far away were you from his residence?

A. Approximately 375 yards. We hit it with a range finder.

Q. When were you deployed to that location?

A. Between one and two o'clock we were deployed, and it took us probably 45 minutes to work into position.

Q. Prior to being deployed, were you briefed on the defendant or his prior activities?

A. Yes, I was.

Q. Can you tell the Judge what you knew of the defendant at that time?

A. We knew that there were arrest warrants for the defendant out of Maryland. I knew that Special Investigations Unit was preparing or had

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Official Court Reporter

Darren Short - Direct

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search warrants for the residence, that he had a violent history, and that he was a prohibited felon.

Q. Did you observe the defendant at any point on May 11, 2001?

A. Yes, I did. From our position I was using a four and a half by fourteen Leopold scope mounted to a 700 Remington rifle for observation purposes. I was able to observe the defendant exiting his residence, working in the yard, back and forth to his vehicles.

During the course of my observations I observed him around five o'clock. He came out of his residence, with blue jean shorts on, and a handgun on his right hip.

Q. What made you believe it was a handgun?

A. Through the scope you could see that there was a black holster and the handle coming out of the holster, which was to my observation, from my schools, it was a handgun on his right hip. We observed him doing routine activities in the yard, carrying it on his right hip.

Q. Was there anything about the position of the gun or the gun itself that led you to believe it

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Darren Short - Direct

27

wasn't a knife or some other object?

A. You could tell it was weighting down on the right side which caused the shorts to slide a little bit to the right. When you wear a gun, the weight will pull on the right side. Also just with the shape of the handle coming out of the holster, it was very distinctive.

Q. Can you describe the -- your vision that day in relation to whether it was blocked or what the weather was like?

A. We had a clear vision. I had my rifle mounted on a tree branch in the tree line. I was unobstructed by any trees or anything. I had low crops all the way from the tree line to the roadway, and then to his house. The day before I had been in that position and we took video and I believe photos were made of that from my position.

MR. O'CONNOR: Your Honor, if I could have one second. If I could have an item marked for identification.

THE COURT: Mark the item for identification, Mr. Clerk.

SHEILA A. DOUGHERTY  
Official Court Reporter23 MARYLAND WARRANT  
WAS NOT OUT  
YET.

Darren Short - Direct

Darren Short - Direct

1 THE CLERK: It has been marked as State's  
2 for Identification B.

3 (State's Exhibit B marked for  
4 identification.)

5 BY MR. O'CONNOR:

6 Q. Detective Short, I am going to hand up  
7 what has been marked as State's A. Do you recognize  
8 that?

9 A. Yes. That is the residence we were set up  
10 on. That was the view I had from my position.

11 MR. O'CONNOR: Your Honor, at this point  
12 the State would move State's for Identification A as  
13 State's Exhibit 2.

14 THE COURT: Any objection?

15 MR. SCHMID: No objection, Your Honor.

16 THE COURT: It is admitted. Mark it as an  
17 exhibit.

18 THE CLERK: It has been marked as State's  
19 Exhibit 2.

20 (State's Exhibit 2 received into  
21 evidence.)

22 BY MR. O'CONNOR:

23 Q. Detective Short, looking at State's

1 Exhibit 2 again, does that depict the same general  
2 area you were in on May 11? That video was taken  
3 May 10?

4 A. Yes. The photograph was taken May 10. We  
5 were back in the same location May 11.

6 Q. What kind of video camera were you using  
7 at the time?

8 A. A Sony Handycam. I am not sure what the  
9 magnification was on it.

10 Q. But that is from 375 yards?

11 A. Yes. That is from our position, and it  
12 was zoomed in to cover the front of the house.

13 Q. Did you observe the defendant leave the  
14 residence?

15 A. Throughout the day, throughout our  
16 observation we observed him several times walking  
17 around the yard. I watched him come out his front  
18 door and clean his fish. He took a picture of his  
19 fish, a Polaroid picture of him. We observed him do  
20 that and take the picture back inside and clean the  
21 fish and go around the other side of the house.

22 When he went out of our sight according to  
23 the picture, the right side of the house, Corporal

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Official Court Reporter

Darren Short - Direct

30

1 Layfield and his partner was there to pick up where  
2 we left off. We were to observe him when he was  
3 outside the residence.

4 Q. At approximately what time did the  
5 defendant ultimately leave his residence?

6 A. Yes. He left the residence at  
7 approximately 2029 hours.

8 Q. Which is 8:30? *this one he's covering with two 155 times*

9 A. 8:30, approximately. 8:39 Prior to him  
10 leaving, we observed him actually in the vehicle.  
11 There is a Ram Charger, and it was parked in about  
12 the same place. I can't say exactly the same place,  
13 but a little bit to the left of the doorway, the  
14 day, on the 11th, observed him going back and forth  
15 in and out of the house to the Ram Charger. And he  
16 changed clothing and put on a dark-colored tee shirt,  
17 and jeans, and was moving back and forth to the  
18 vehicle prior to leaving. Then he ended up back out  
19 of the driveway and heading southbound on the  
20 roadway.

21 Q. Did you have a clear view to whether he  
22 was putting specific objects in the vehicle?

23 A. I could see him going back and forth, but

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1 actually you can see from the picture when he comes  
2 out the door, his right side, when he comes to the  
3 driver's side, he is going to be blocked from me, so  
4 I could see him moving. I could see him going in  
5 and out of the car, but I can't actually see what he  
6 has in his hand due to the blocking from the other  
7 vehicles, and just in the proximity we were to where  
8 the vehicle was sitting, would just cross, you know,  
9 you could see above the car into it.

10 Q. Were you communicating your observations  
11 to other state police officers during this time?

12 A. We were steadily communicating to the  
13 Special Investigation Unit officers that were there  
14 to take notice during the investigation, and also to  
15 the sniper team leaders and the people that were --  
16 the SORT Team leaders that were preparing for the  
17 arrest of the subject.

18 Q. Once the defendant left his residence,  
19 what did you do?

20 A. When he went out, as soon as his vehicle  
21 left my sight we stayed on the house to maintain  
22 that no one else entered the residence, so we  
23 covered the whole front, and which is we counted to

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1 be one side had the front and right side of the  
2 residence, and we allowed the other snipers to cover  
3 the back to make sure no one entered the residence  
4 prior to state replying.

5 Q. You had the same position?

6 A. Right. We had the same position. As soon  
7 as the vehicle left our position, we left.  
8 Surveillance units picked them up and we maintained  
9 the house, which was our primary assignment.

10 MR. O'CONNOR: No further questions.

11 THE COURT: You may cross-examine.

12 CROSS-EXAMINATION

13 BY MR. SCHMID:

14 Q. Officer Short, that photograph that has  
15 just been admitted into evidence by the State,  
16 State's 2.

17 A. Um-hum.

18 Q. That, would you say, fairly depicts what  
19 your sight picture was the next day?

20 A. No, not through the -- I could zoom, this  
21 was zoomed out to -- I could take the whole -- when  
22 I shot this video I zoomed out to I could get the  
23 whole front of the house. My scope will zoom in a

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Darren Short - Cross

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1 lot closer than that 214 power scope that I was  
2 using, so I can get a lot closer to this if that is  
3 what you mean.

4 Q. During the course of your observations you  
5 were in radio communication with other officers?

6 A. Yes, I was.

7 Q. Did that include Corporal Calloway?

8 A. Yes, it did.

9 Q. And you reported to Corporal Calloway your  
10 observations concerning a possible weapon on his  
11 hip; correct?

12 A. That's correct. I reported on the same --  
13 the frequency I was using was going to the members  
14 of the Special Investigation and also the SORT Team  
15 members.

16 Q. And you recall telling or broadcasting out  
17 on this joint frequency that you observed what you  
18 thought was a pistol on his hip?

19 A. Numerous times.

20 Q. Not absolutely certain, it is a pistol, it  
21 can be nothing else; correct?

22 A. I said -- actually, at one point I said it  
23 is a gun, I said it appeared to be a gun, appears to

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Official Court Reporter

Darren Short - Cross

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1 be a gun, it is a gun. I drew the conclusion it was  
2 a gun...

3 MR. SCHMID: Your Honor, may I approach  
4 the witness?

5 THE COURT: Yes.

6 BY MR. SCHMID:

7 Q. I hand you what has been marked Defense  
8 for Identification A. Ask you to take a look at  
9 that.

10 A. Um-hum.

11 Q. Notice an individual there in the  
12 photograph?

13 A. Yes.

14 Q. His back is to you?

15 A. Um-hum.

16 Q. No shirt?

17 A. Um-hum.

18 Q. Appears to have something on his hip;  
19 correct?

20 A. Looks like a knife and a pouch.

21 Q. Now, you were viewing this subject that  
22 you are describing from 375 yards away; correct?

23 A. Um-hum.

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Darren Short - Cross

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1 Q. What is the range of error for that? Are  
2 you talking about within 20 yards?

3 A. What do you mean, range of error?

4 Q. You say it was 375 yards, but you didn't  
5 pace it off?

6 A. We used a laser range finder.

7 Q. And that range finder is accurate to  
8 within how many yards?

9 A. It is inaccurate.

10 Q. Did you testify --

11 A. I can't testify to it.

12 Q. You can't say as you sit here today that  
13 it is absolutely accurate in a hundred percent  
14 order?

15 A. I would have to pull the manual.

16 Q. As this point as you sit here -- now, from  
17 that distance you observed this individual with what  
18 you believed was a pistol?

19 A. Um-hum. A handgun.

20 Q. A handgun. And you never saw him pull it  
21 out?

22 A. No.

23 Q. Never saw him with it in his hand?

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Official Court Reporter

Darren Short - Cross

Darren Short - Cross

1 A. No. On his hip.

2 Q. Just whatever it was that you saw was  
3 always on his hip, remained in whatever the --

4 A. The holster.

5 Q. Call it a holster, pouch, pack, whatever  
6 it was you saw on his hip, it remained within that  
7 on his hip the entire time?

8 A. During my observations, yes.

9 Q. How long did you -- during the course of  
10 what, about seven hours?

11 A. That we set up, yes.

12 Q. During that seven-hour period that you  
13 were observing him, how much of that time was he  
14 actually in a position where you could observe him?

15 A. He was in and out. Pretty much in and out  
16 of the house from 5:00 until 8:29 when he left, he  
17 was in and out of the house. Sometimes for brief  
18 moment, sometimes for longer durations. I don't  
19 know the exact, but putting it all together, how  
20 long it would be.

21 Q. Appeared to be doing a little bit of work  
22 around the yard?

23 A. He worked around the yard, cleaning fish,

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1 taking pictures of fish.

2 Q. He appeared to be taking things out of the  
3 vehicle consistent with that activity, cleaning the  
4 fish?

5 A. Yes. He went into the rear, went into a  
6 cooler on occasion. He took the fish out of the  
7 cooler in the rear of the Ram Charger.

8 Q. Okay.

9 MR. SCHMID: May I retrieve the  
10 photograph, Your Honor?

11 THE COURT: Yes.

12 MR. SCHMID: If I could have a moment,  
13 Your Honor.

14 Nothing further, Your Honor.

15 THE COURT: Mr. O'Connor.

16 REDIRECT EXAMINATION

17 BY MR. O'CONNOR:

18 Q. When you observed the defendant outside,  
19 was he alone?

20 A. Yes.

21 MR. O'CONNOR: No further questions.

22 MR. SCHMID: Nothing further, Your Honor.

23 THE COURT: You may step down.

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1 (The witness stepped down.)

2 MR. O'CONNOR: Your Honor, may I retrieve  
3 the photograph?

4 THE COURT: You may.

5 MR. SCHMID: Your Honor, may I return the  
6 photograph marked Defense ID-A to the prothonotary?

7 THE COURT: Mr. O'Connor.

8 MR. O'CONNOR: Your Honor, the State next  
9 calls Detective Mike Calloway.

10 \* \* \* \* \*

11 MICHAEL CALLOWAY

12 \* \* \* \* \*

13 called as a witness on the part and behalf  
14 of the State, being duly sworn, was  
15 examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. O'CONNOR:

18 Q. Good afternoon, Detective.

19 A. Good afternoon.

20 Q. Detective, how long have you been employed  
21 by Delaware State Police?

22 A. Since March of 1996.

23 Q. What is your current assignment?

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1 A. I am assigned to the Delaware State Police  
2 Special Investigations Unit.

3 Q. What does that unit focus its activities  
4 on?

5 A. Drug activity.

6 Q. Anything else?

7 A. Mainly stipulating drug activity, sales,  
8 distribution of drugs.

9 Q. Do you work in an undercover capacity --

10 A. Yes.

11 Q. -- or are you a uniformed officer?

12 A. Yes, undercover capacity.

13 Q. How many narcotics investigations have you  
14 participated in while in the drug unit?

15 A. Over a hundred.

16 Q. How many search warrants have you  
17 attempted to obtain or obtained while in the drug  
18 unit, either as an affiant or co-affiant?

19 A. Well over 50.

20 Q. Were you working on May 11, 2001?

21 A. Yes, I was.

22 Q. Had you received information regarding the  
23 defendant, Henry Glanding?

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1 A. Yes, I did.

2 Q. Can you explain to the Court briefly what  
3 it is that you learned about the defendant prior to  
4 and up until May 11, 2001?

5 A. We had received -- I had received  
6 information that the defendant kept large amounts of  
7 methamphetamine in his house, was also involved in  
8 distribution, and that he had numerous weapons, he  
9 was an avid hunter. On May 11 I was contacted by  
10 Detective Williams, also of the Delaware State  
11 Police, and was also assigned with the -- sworn in  
12 with the DEA and Drug Enforcement Agency. He  
13 advised that a subject had been assaulted by several  
14 members of a Pagan organization in Maryland. And  
15 one of them was the defendant, Mr. Glanding, setting  
16 in the white, who is a suspect.

17 Q. The Pagan motorcycle gang or club?

18 A. Yes, it is a motorcycle gang.

19 Q. Armed with this information, what did you  
20 do? Did you learn whether or not there was an  
21 arrest warrant in the State of Maryland?

22 A. Yes, I did.

23 Q. Can you explain to the judge how you came

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1 to that information?

2 A. First I did a confirmation hit on May 11,  
3 and received a confirmation at 1438 hours on May 11  
4 that the defendant was wanted for numerous felony  
5 warrants out of Maryland. Also I received a copy of  
6 the actual warrant out of Maryland prior to  
7 somewhere around 1700 hours after arriving at the  
8 range, Delaware State Police range.

9 Q. Let me take you back to the earlier part  
10 of May 11. At some point earlier in the day you  
11 learn that the defendant was wanted on felony  
12 charges; correct?

13 A. That's correct.

14 Q. Subsequently did you prepare a search  
15 warrant or a co-affiant on a search warrant?

16 A. That's correct. I was a co-affiant with  
17 Detective Boulerville on a search warrant for 829 Lion  
18 Hope Road, which is Mr. Glanding's residence.

19 Q. And with respect to the warrant, can you  
20 tell the judge when or what you did in an effort to  
21 get that warrant approved?

22 A. It was evidence that obtained by  
23 past-proven cooperating individual and also from the

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1 intelligence gathering system that the Delaware  
2 State Police has.

3 Q. What did you do to get a warrant signed?  
4 Where did you go? *Why not I.P. court?*

5 A. I responded to Superior Court in Kent  
6 County, and met with Judge Vaughn, and myself and  
7 Detective Boulerville, and Judge Vaughn signed the  
8 warrant.

9 Q. Approximately what time do you recall  
10 meeting with Judge Vaughn?

11 A. Approximately 15 -- between 1500 and 1600  
12 hours, three o'clock, 3:00 p.m. and 4:00 p.m.,  
13 between the hours of 3:00 p.m. and 4:00 p.m.

14 Q. Once the search warrant was signed for the  
15 defendant's residence, where did you respond?

16 A. I responded to the range in Smyrna for the  
17 Delaware State Police.

18 Q. Why?

19 A. It was to conduct a briefing with all  
20 members that was going to be involved, which  
21 included SIU members and a Special Operations  
22 Response Team for Delaware State Police.

23 Q. While at the range did you receive a hard

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1 copy of the arrest warrant out of the State of  
2 Maryland?

3 A. That's correct.

4 MR. O'CONNOR: Your Honor, may I have an  
5 item marked for identification?

6 THE COURT: You may.

7 THE CLERK: It has been marked as State's  
8 for Identification B.  
9 (State's Exhibit B marked for  
10 identification.)

11 MR. O'CONNOR: May I approach the witness,  
12 Your Honor?

13 THE COURT: Yes.

14 BY MR. O'CONNOR:

15 Q. Detective Calloway, I would like you to  
16 look at what has been marked as State for  
17 Identification B. Do you recognize that document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It is a warrant out of the District Court  
21 of Maryland for Caroline County for Henry Glanding.

22 Q. Is that the warrant you just referred to  
23 in your testimony that you received a hard copy of

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1 at the State Police firing range?

2 A. That's correct.

3 MR. O'CONNOR: Your Honor, the State would  
4 move State's for Identification B as the next  
5 State's Exhibit, which would be Exhibit Number 3.

6 THE COURT: Any objection?

7 MR. SCHMID: For purposes of this hearing,  
8 no, Your Honor.

9 THE COURT: Mark it as the next State's  
10 Exhibit.

11 THE CLERK: It has been marked as State's  
12 Exhibit 3.

13 (State's Exhibit 3 received into  
14 evidence.)

15 BY MR. O'CONNOR:

16 Q. Corporal Calloway, or Detective Calloway,  
17 when you received a copy of this warrant had any  
18 action been taken by the State Police to arrest the  
19 defendant?

20 A. No.

21 Q. Had a search warrant been executed at his  
22 residence at this time?

23 A. No, it had not.

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1 Q. And this is subsequent to you going to  
2 Judge Vaughn's chambers and having a search warrant  
3 signed; correct?

4 A. That's correct.

5 Q. After you met at -- to do a briefing at  
6 the firing range, can you describe to the Judge what  
7 occurred during the briefing?

8 A. Basically we were making everybody aware  
9 that the information that the defendant carried a  
10 firearm, the information that he possibly carried it  
11 at all times. We also had made through a -- we  
12 received information from a confidential informant  
13 that he made a threat that if he was ever stopped by  
14 a police officer while in possession of drugs, he  
15 was going to shoot that police officer, and he even  
16 went to further extent to how he would dispose of  
17 the body.

18 Q. Were you also receiving information at or  
19 about this time from Detective Short regarding the  
20 defendant's activities at his residence?

21 A. That's correct.

22 Q. And was it communicated to you that he was  
23 believed to possess a firearm at that time?

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1 A. Yes.

2 Q. What was the plan based on the arrest  
3 warrant to arrest this defendant?

4 A. Basically to arrest the defendant we had  
5 to execute a search warrant, and we thought it would  
6 be more safe, with the weapon seen on his side, to  
7 have him in a vehicle and conduct a felony stop  
8 after he has left the residence instead of executing  
9 the warrant with him inside the residence.

10 Q. The stop of the vehicle was based on the  
11 arrest warrant?

12 A. That's correct.

13 Q. Can you describe to the Judge what the  
14 plan was to stop the car?

15 A. A felony stop, to stop the car and have a  
16 vehicle in front of his vehicle to be able to slow  
17 him down so he wouldn't be able to flee, and at that  
18 time box him in, what we call box him in so he was  
19 not able to flee in a vehicle, and then at that time  
20 to extract him from the vehicle as soon as possible  
21 to try to prevent any violence or to get him away  
22 from the gun.

23 Q. Were you present at the time the defendant

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1 was extracted from his vehicle?

2 A. No, I was not.

3 Q. What occurred next with respect to your  
4 part of the investigation?

5 A. I responded to the residence after it  
6 was -- after the warrant was executed on his  
7 residence, and it was cleared and secure.

8 Q. Did you participate in the search of his  
9 residence?

10 A. Yes, I did.

11 Q. Can you briefly just describe to the Judge  
12 the items that you found with respect to contraband  
13 or weapons?

14 A. Found numerous guns and a gun safe in the  
15 living room. Three more guns were found in a  
16 utility room, shotguns, long guns. Found several  
17 thousand rounds of ammunition, different types --  
18 .12 gauge, .20 gauge shotgun shells, rifle  
19 ammunition -- and also found a large quantity of  
20 methamphetamine inside the safe.

21 Q. Did you find anything else or did that  
22 basically cover it?

23 A. Inside the safe was also some what they

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1 call as colors. He had a jacket with his name. His  
2 nickname was Hard Head. He was known as Hard Head.  
3 Had his name on it, inside the safe. Had also a --  
4 what they call a walking stick that the Pagans name,  
5 the walking stick with Hard Head engraved on it.

6 Q. Was there any indication of a one percent  
7 or anywhere?

8 A. There was one percent on a lot of items  
9 that he had, a picture of the Pagan law with  
10 one percent emblem on it. He had one percent on his  
11 colors, his jacket that he wore. I can't recall  
12 exactly how many times one percent, but it was in  
13 there quite a bit.

14 Q. What does that signify, if anything?

15 A. One percent of all Pagans are felons. I  
16 am not exactly sure. I am not really familiar with  
17 the Pagans.

18 Q. At the time that the arrest warrant and  
19 search warrant were executed, were you aware whether  
20 or not the defendant was a convicted felon?

21 A. Yes, I was.

22 Q. Do you remember when you confirmed that  
23 fact?

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1 A. I confirmed that fact on 5-10 and 5-11  
2 through the Kent County AG's Office. On May 10,  
3 2001 and May 11, 2001.

4 MR. O'CONNOR: If I can have one moment,  
5 Your Honor.

6 THE COURT: All right.

7 BY MR. O'CONNOR:

8 Q. Did you perform the briefing at the gun  
9 range?

10 A. I believe that may have been Detective  
11 Boulerville.

12 Q. Again that involved the information you  
13 were receiving from the field from Detective  
14 Layfield and Detective Short regarding the  
15 defendant's activities?

16 A. That's correct.

17 MR. O'CONNOR: No further questions, Your  
18 Honor.

19 Sorry, Your Honor.

20 BY MR. O'CONNOR:

21 Q. Is this in Kent County, Delaware?

22 A. Yes. This occurred in Kent County,  
23 Delaware, at 829 Lion Hope Road.

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1 Q. Is the person you arrested that day  
2 sitting in the courtroom?

3 A. Yes, Mr. Glanding, setting in the white at  
4 the table there.

5 MR. O'CONNOR: Thank you. No further  
6 questions.

7 MR. SCHMID: May I have a moment, Your  
8 Honor?

9 THE COURT: Yes.

10 CROSS-EXAMINATION

11 BY MR. SCHMID:

12 Q. Officer Calloway, what time did you  
13 conduct your briefing?

14 A. Approximately 1700, between 1700 and 1730  
15 hours.

16 Q. That is in layman's terms 5:00 to 5:30?

17 A. I am sorry. 5:00 p.m., 5:30 p.m.

18 Q. And that was the time when you advised the  
19 officers involved of, as you have described, his  
20 background, what was known about him, the fact that  
21 he may carry a firearm with him?

22 A. No. They were advised prior to going out  
23 in the field about that.

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1 Q. All right. Well, speaking of that, you  
2 indicated -- no. Strike that.

3 You wrote a report in this matter;  
4 correct?

5 A. Yes, I did.

6 Q. In fact, how would you describe your  
7 position with respect to this investigation?

8 A. How would I describe -- I was the  
9 investigating officer.

10 Q. So the chief investigating officer;  
11 correct?

12 A. Yes.

13 Q. Therefore you have the primary  
14 responsibility to oversee the collection of the  
15 evidence; correct?

16 A. The collection of the evidence was -- not  
17 the actual collection, but to oversee that.

18 Q. In other words, if there is a question  
19 about that, they would come to you as the chief  
20 investigating officer?

21 A. Myself and Detective Boulerville were both  
22 in charge.

23 Q. Okay. Detective Boulerville did not write

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1 the police report --

2 A. That's correct.

3 Q. -- for this case. You did; correct?

4 A. That's correct.

5 Q. Do you recall in your police report your

6 description of the reports that were given to you by

7 Detectives Layfield and Short concerning their

8 observations?

9 A. I didn't understand that question. Could

10 you ask it again?

11 Q. In your police report you deal with the

12 observations that were reported to you by Detectives

13 Short and Layfield from their concealed locations;

14 correct?

15 A. I am not sure -- I am not sure I

16 understand what you are asking here.

17 Q. You are in regular radio communication

18 with Detective Layfield?

19 A. That's correct.

20 Q. And Detective Short, correct?

21 A. Okay. Yes.

22 Q. And they were transmitting on this

23 frequency, and you had a chance to hear them as they

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1 made their observation?

2 A. That's correct.

3 Q. And you recorded the observations that you

4 heard in the police report; correct?

5 A. Yes.

6 Q. Do you have a copy of the police report

7 with you?

8 A. Yes, I do.

9 Q. Would you turn to the investigative

10 narrative, first full page?

11 A. Okay.

12 Q. Does it begin at the top, During the week

13 of May 7?

14 A. The first full sentence was, Set up on

15 defendant's residence.

16 MR. SCHMID: May I approach the witness,

17 Your Honor?

18 THE COURT: You may.

19 BY MR. SCHMID:

20 Q. This is the page.

21 A. Okay.

22 MR. SCHMID: It appears as though I may

23 have a different printout, Your Honor. If I may

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1 just observe something here.

2 Thank you, Your Honor.

3 BY MR. SCHMID:

4 Q. With respect to the narrative, okay, the

5 third paragraph in, I believe on your document it

6 would be the top of the second page?

7 A. Okay.

8 Q. Which begins on May 11, surveillance was

9 set up, okay? Would you please go to the last full

10 sentence in that paragraph and read that to

11 yourself?

12 A. Read it to myself or --

13 Q. Yes. Just read it to yourself.

14 A. Okay.

15 Q. The officers who were making these

16 observations were Detectives Layfield and Short;

17 correct?

18 A. That's correct.

19 Q. And this is a brief summary of what they

20 reported to you?

21 A. That's correct.

22 Q. And it refers to the handgun that has been

23 described here?

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Michael Calloway - Cross

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1 A. That's correct.

2 Q. And they describe it as a possible handgun

3 on the right hip; correct?

4 A. That's correct.

5 Q. And to the best of your recollection that

6 was the extent of their report to you; correct?

7 A. That's correct.

8 Q. And that is why you wrote it in this

9 fashion as opposed to saying they saw a handgun on

10 his hip; correct?

11 A. That's correct.

12 Q. If they had said that they had actually

13 saw a handgun, there was no doubt in your mind you

14 would have written they saw a handgun on his hip;

15 correct?

16 A. Yes, that's correct.

17 Q. Okay. Now, when you were getting your

18 search warrant, that search warrant was only for the

19 residence; correct?

20 A. The residence and any and all vehicles

21 located on the property.

22 Q. The -- and I understand that. The vehicle

23 that Mr. Glending was stopped in was in fact not

SHEILA A. DOUGHERTY  
Official Court ReporterPossible Gun  
Not For SaleWARRANT WAS  
NOT FOR PUBLIC  
RANGE



Michael Calloway - Cross

Michael Calloway - Cross

1 stopped on his property; correct?

2 A. That's correct.

3 Q. Okay. You would agree that the vehicle

4 was searched where it was stopped?

5 A. That's correct.

6 Q. Okay. And you would also agree that

7 pursuant to your description of wanting to get him

8 out of the vehicle as soon as possible, that in fact

9 he was pulled from the window of the vehicle;

10 correct?

11 A. I don't know that. I was not there to see

12 that. I did not hear that, no.

13 Q. Who was present at the stop in order to

14 see that?

15 A. It would have been the SORT members. I

16 don't --

17 Q. Can you name who the chief officer, the

18 highest ranking officer that would have been?

19 A. Sergeant Kracyla.

20 Q. Risilla?

21 A. Kracyla.

22 Q. Okay. Now, you would agree, though, that

23 the plan was this described felony stop, and I

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1 believe your testimony on direct was that the plan

2 was to get him away from the gun as soon as

3 possible?

4 A. That's correct. That would be my -- yeah.

5 When I state that, a felony stop can be done

6 different ways. I don't know how the SORT Team -- I

7 am not a member of the SORT Team, so I am not

8 trained on how they conduct their felony stops, but

9 yes, was to get him away from the gun for the safety

10 of all.

11 MR. SCHMID: Your Honor, may I inquire of

12 the State as to their intention to present someone

13 from the SORT Team who was present at the time of

14 the stop.

15 MR. O'CONNOR: Sergeant Kracyla is in the

16 hallway, Your Honor.

17 MR. SCHMID: Thank you.

18 BY MR. SCHMID:

19 Q. When you executed your search warrant, you

20 referred to thousands of rounds of ammunition.

21 A. That would be an estimate. I never

22 counted them.

23 Q. All right. Large number of them were

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Michael Calloway - Cross

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1 small caliber ammunition for a .22, perhaps?

2 A. There was quite a few .22 caliber

3 ammunition, yes.

4 Q. And you have some experience with

5 firearms; correct?

6 A. Yes.

7 Q. From your knowledge, it is quite common to

8 have .22 caliber ammunition purchased in quantity of

9 500 and 1,000, in large bricks, as it is called?

10 A. Yes.

11 Q. And this is commonly used for plinking;

12 correct?

13 A. That's correct.

14 Q. You aware of how many individuals resided

15 at the residence?

16 A. I believe, I know that there was Mary

17 Mullins, also the defendant, and I believe two small

18 children; but I am not sure because they were not

19 present at the time of the search warrant.

20 Q. When you say "small," though, you don't

21 know their ages?

22 A. That's correct.

23 Q. Could have been young teens for all you

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Official Court Reporter

Michael Calloway - Cross

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1 know?

2 A. I could not tell you their ages.

3 Q. I promise not to speak when you are

4 talking if you will let me know. Sorry.

5 This gun safe was an actual gun safe;

6 correct?

7 A. Yes, that's correct.

8 Q. Lockable?

9 A. Yes.

10 Q. Was it locked at the time that the search

11 was conducted?

12 A. I cannot recall.

13 Q. Okay. You would agree that the

14 information that was provided to you, which you

15 referred to as past-proven reliable informant, was

16 provided by someone who himself had incurred a

17 charge or charges and was working with you in order

18 to obtain some benefit therefrom?

19 A. Could you rephrase that question?

20 MR. O'CONNOR: The question goes to the

21 identity of the informant.

22 MR. SCHMID: I am not seeking identity,

23 Your Honor, I am seeking -- the assertion is

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SAFE WAS COOKED.  
SAFE WAS CONVENIENTLY CAN'T REMEMBER.  
NO WARRANT FOR SAFE.  
I WAS DENIED  
CONFRONTATION  
CLAUSE  
Check on warrant for Cooked Safe

Michael Calloway - Cross

Michael Calloway - Redirect

1 past-proven reliable. The assertion is certain  
2 information was provided. I want to explore that.  
3 I will do everything I can to exclude any effort to  
4 obtain identity information.

5 THE COURT: Objection is sustained.

6 BY MR. SCHMID:

7 Q. Where were you at the time that the  
8 vehicle was stopped?

9 A. I was with other members of the SIU unit,  
10 approximately two or three miles out of the area.

11 Q. Okay. You participated in the search of  
12 the residence?

13 A. Yes, I did.

14 MR. SCHMID: Nothing further, Your Honor.  
15 Thank you.

16 THE COURT: Mr. O'Connor.

17 REDIRECT EXAMINATION

18 BY MR. O'CONNOR:

19 Q. Do you still have your police report there  
20 in front of you?

21 A. Yes, I do.

22 Q. Looking at the paragraph Mr. Schmid  
23 referred to, did you indicate Corporal Piser's

1 observation of the defendant?

2 A. Excuse me?

3 Q. Did you indicate Corporal Piser advised  
4 you his observations of the defendant were that day?

5 A. It said, Corporal Piser advised observed  
6 the defendant in the yard with a handgun holstered  
7 on his right hip.

8 MR. SCHMID: I am sorry, Your Honor.

9 MR. O'CONNOR: Nothing else, Your Honor.

10 THE COURT: Mr. Schmid.

11 MR. SCHMID: Nothing further, Your Honor.

12 THE COURT: The witness may step down.

13 (The witness stepped down.)

14 MR. O'CONNOR: Your Honor, may I request a  
15 five minute recess? Sergeant Kracyla got here at  
16 one o'clock and I haven't had a chance to speak to  
17 him.

18 THE COURT: All right. Court is in recess  
19 for ten minutes.

20 (A brief recess was taken.)

21 THE COURT: Mr. O'Connor.

22 MR. O'CONNOR: Thank you for the recess,  
23 Your Honor.

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Official Court Reporter

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Michael Calloway - Redirect

1 The State calls Sergeant Robert Kracyla.

2 \* \* \* \* \*

3 ROBERT KRACYLA

4 \* \* \* \* \*

5 called as a witness on the part and behalf  
6 of the State, being duly sworn, was  
7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. O'CONNOR:

10 Q. Good afternoon, Sergeant Kracyla.

11 A. Good afternoon.

12 Q. Sergeant Kracyla, how long have you worked  
13 for Delaware State Police?

14 A. About 16 years now.

15 Q. You are currently a Sergeant?

16 A. Yes, sir, I am.

17 Q. What is your job? What are your job  
18 responsibilities as a Sergeant?

19 A. Right now I am assigned to an FBI task  
20 force working with the FBI. I am attached to a  
21 violent crime fugitive task force up there. It is a  
22 multi-jurisdictional task force investigating  
23 violent crime.

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Robert Kracyla - Direct

1 Prior to that I was the shift manager for  
2 four years. I trained at the Academy. Of course I  
3 worked the road like every other trooper for about  
4 eight years, and prior to that I spent three years  
5 with Dover City Police as a patrolman.

6 Q. When you say "up there" are you talking  
7 about New Castle County?

8 A. Yes, in Wilmington.

9 Q. What Troop are you affiliated with?

10 A. I am not actually assigned to a troop  
11 right now. I am assigned to the drug unit and  
12 detached into the FBI office.

13 Q. Is that why you look like that today,  
14 because you were doing fugitive work?

15 A. Correct. I just got the call and came  
16 right out of Wilmington.

17 Q. Do you also have responsibilities with  
18 respect to the SORT Team?

19 A. Yes, I am a team leader with the SORT  
20 Team. I have been a member of the SORT Team since  
21 1989. I am assistant team leader, I believe it was,  
22 in 1996, and I became a team leader around 1998.

23 Q. What are the duties of a team leader?

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DENIED  
CONFRONTATION  
I did ask my attorney to.

Robert Kracyla - Direct

Robert Kracyla - Direct

1 A. The team leader is typically do the recon  
2 on the site preparation, the recon on the upcoming  
3 operations. We do -- we actually develop the plans,  
4 tactical plans that the team will be using for  
5 whatever operation. We also review the search  
6 warrant, and pretty much are the liaison between the  
7 investigator and the team. We set up the plans, the  
8 tactical plan for the team.

9 Q. So the police inform you of a subject, and  
10 you determine what kind of plan you should use to --

11 A. To safely --

12 Q. -- apprehend them?

13 A. Correct.

14 Q. With respect to the defendant, Henry  
15 Glanding, were you involved in his apprehension?

16 A. Yes, sir, I was.

17 Q. Could you describe to the Judge what it is  
18 you did, what you knew about the defendant, and what  
19 it is you did to determine your plan to apprehend  
20 him?

21 A. Typically when we are developing a  
22 tactical plan for an operation involving high risk  
23 takeoff or high risk drug entries or anything along

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THAT WENT INTO NIGHT TIME. HOURS

11:55 PM  
11:59 PM

1 those lines, we kind of use the drug investigators  
2 to go ahead and brief us on all the intelligence  
3 they have. They will go ahead and tell us who the  
4 target is, what the threat level is perceived, and  
5 typically the only time we would be called if it was  
6 something that was of a high risk nature.

7 I remember this investigation contacting  
8 the drug detectives and then explaining the  
9 association with the Pagan motorcycle gang. Also  
10 the criminal history was brought in, the threat of  
11 weapons, and it was our determination that once we  
12 found out that there was a warrant out of Maryland,  
13 which was the reason we were there, to make the  
14 arrest, we felt that it would be unsafe for our team  
15 to go ahead and make entry into the residence. We  
16 didn't want to make an entry into the residence if  
17 we didn't have to, and we did have daytime search  
18 warrant, so we were just basically going to try and  
19 wait it out up until 2200 hours, ten o'clock at  
20 night, until he would come out. That way we don't  
21 put our guys or our team members at unnecessary  
22 risk.

So what we did was we said we would go  
THE POLICE INTENDED TO  
EXECUTE A NIGHTTIME SEARCH.  
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Robert Kracyla - Direct

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1 ahead and try and set up surveillance on him while  
2 use of the -- our SO's, which are our snipers. In  
3 that area where Mr. Glanding lived, it was extremely  
4 rural area. His trailer kind of sits on a roadway  
5 where there is nothing else around. There is woods  
6 probably 300 yards to the front of his residence and  
7 probably 2, 300 yards to the rear of his residence,  
8 and we know we could get our SO out there with their  
9 scopes and field us intelligence as to the suspect's  
10 movement.

11 The plan was to go ahead and allow the  
12 suspect to leave the residence, thereby we don't put  
13 ourselves at unnecessary risk, let him go down the  
14 road and conduct what we call a felony car jam,  
15 which we have trained that and we also have used in  
16 the past.

17 Q. Prior to conducting the stop, did you have  
18 information from the sniper observers about whether  
19 the defendant possessed a weapon, at least what they  
20 were observing?

21 A. Yes, sir, we did. We were out on  
22 location. When I say "on location," the target's  
23 house, Mr. Glanding's house, was on Lion Hope Road,

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NO CONSTRUCTIVE  
POSSESSION

First it was 8:00  
Sec. it was 8:30  
3rd it was 8:50

Robert Kracyla - Direct

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1 and we were in a staging area probably a half mile  
2 north of his residence. What the plan was to allow  
3 him -- and we had -- the SO, or the snipers, had  
4 observed Mr. Glanding go in and out of his residence  
5 several times. They were telling us what he was  
6 wearing. They clearly identified him, and they also  
7 identified what they believed was a weapon on his  
8 right hip while he was out working in his yard, and  
9 I would say that that was about 1500 hours,  
10 somewhere in that area, 15, 1600 hours.

11 And we were constantly getting information  
12 about the defendant or actually Mr. Glanding coming  
13 in and out of the house. I think he was cleaning  
14 his fish for a while. Constantly we had information  
15 as to what his movements were. He was armed pretty  
16 much of the time the SO's had responded back to us.

17 What we wanted to do was go ahead and get  
18 him away from the weapon and get him out of his  
19 house. He had come out to work on his car one time,  
20 and he had some car problems. Bottom line was, I  
21 guess it was around 2000 hours that he would get  
22 into his vehicle, which is a pickup truck, or not a  
23 pickup truck, a Ram pickup truck, and start

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Official Court Reporter

Robert Kracyla - Direct

1 southbound on Lion Hope Road. That is when we  
2 started to initiate our stop.  
3 MR. O'CONNOR: Your Honor, if I could ask  
4 Sergeant Kracyla to use the board and just briefly  
5 draw what the plan was so Your Honor understands.  
6 THE COURT: You may. Turn it this way  
7 while you are drawing it.  
8 (The witness stepped down.)  
9 THE WITNESS: This was the --  
10 Mr. Glanding's. This is Lion Hope Road.  
11 Mr. Glanding had a trailer down here. Driveway. We  
12 were actually stationed or staged in an area right  
13 here, and there was also another vehicle with us.  
14 When I say this was the van, our take-down van, and  
15 this was a truck, being a pickup truck.  
16 Detective Wright was stationed in an area  
17 down here in an undercover vehicle. What the plan  
18 was, to allow Mr. Glanding to come out of his house  
19 in his truck and start southbound on Lion Hope Road.  
20 When he got to the area of State Route 300, what we  
21 wanted to do was just go ahead, let him go ahead and  
22 turn southbound. The truck would start out next.  
23 What the intent was, to go ahead and have Detective

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Robert Kracyla - Direct

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1 side doors of the van.  
2 What we immediately deploy when we go  
3 into the actual deployment, what happens now,  
4 this is exactly what happened. Detective  
5 Wright comes out, stops his vehicle. Detective  
6 Kreisman comes up and taps him in the rear.  
7 Now, Detective Wright didn't have a chance to  
8 go ahead and put his vehicle in reverse to jam  
9 him inside. Once that vehicle was stopped in  
10 his rear, Mr. Glanding -- and like I say, I  
11 observed this because what happens now is the  
12 door opens up on the van, from our van, and the  
13 first person out of the van is a Detective  
14 Perna, and he has a shield, and I immediately  
15 follow Detective Perna with a sub machine gun.  
16 to go ahead and cover the occupants in the  
17 vehicle. I say, Cover them to make sure they  
18 don't make any movement that may be threatening  
19 toward the team. The shield is to protect the  
20 team. That is why it is the first person out  
21 of the van.  
22 The shield comes out, but as the  
23 shield is coming out of the door and I see it

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Robert Kracyla - Direct

1 Wright go back down the roadway, and he was to go  
2 ahead and get on the roadway and start slowing down  
3 Mr. Glanding, so he was kind of like just get in  
4 front of him and slow him down.  
5 Mr. Glanding comes up, starts to catch up  
6 to Detective Wright, and now the truck is going to  
7 be right behind that vehicle. Now, the van is  
8 behind that vehicle. This is the van, and this is  
9 the truck. As they start to approach the  
10 intersection of State Route 300, Detective Wright  
11 stops his vehicle like he would at a stop sign.  
12 Mr. Glanding is slowing down. As he is slowing to a  
13 stop, what we typically do is we set up a vehicle  
14 jam so there is a -- to decrease any type of chance  
15 of a pursuit developing. It jams the vehicles in.  
16 Detective Kreisman was operating the  
17 truck, comes up and taps Mr. Glanding's vehicle in  
18 the rear. Detective Wright is to go ahead and place  
19 his vehicle in reverse and go ahead and jam that  
20 vehicle in a situation where he can't move forward  
21 or backwards. At the same time the van will move up  
22 right here and actually stop, right alongside the  
23 driver's door, and then the team deploys from the

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Robert Kracyla - Direct

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1 as the door is coming open, I seen Mr. Glanding  
2 start to go -- come out of his truck. He  
3 opened up the door, and started to take maybe  
4 one step out of the truck door. It was my  
5 impression he was going to be confronting the  
6 person that struck him in the rear. He sees  
7 the van. Detective Perna says to him, "State  
8 Police." And he starts to go back into the  
9 van, back into his truck, and Detective Perna  
10 strikes the shield against the driver's door or  
11 actually the driver's window, but the window  
12 was down, of the truck, so he comes up and he  
13 plants the shield on the driver's window of the  
14 truck.  
15 I come forward and cover into the  
16 van, into the truck, with a sub machine gun. I  
17 immediately tell him I want to see his hands, I  
18 want to see his hands.  
19 Now, if I can just refer to my notes  
20 for one second, I want to get the placement of  
21 the team members. So you have myself here,  
22 Detective Perna here, would be number two, and  
23 three, and seven, which is a cover person,

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Robert Kracyla - Direct

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1 which is Lieutenant Ogden, and seven is  
2 Corporal Kleckner. Also another support  
3 person, number four, which is Corporal Boyce.  
4 They are all lined up pretty much on this side  
5 of the car, and we have two additional people  
6 on this side of the car to cover if there  
7 should be someone on the passenger side of the  
8 vehicle, where someone attempted to escape from  
9 this side, they go around and cover the  
10 passenger side of the vehicle.

BY MR. O'CONNOR:

Q. Was anybody else in the vehicle?

\*13 A. There was not anyone else in the vehicle  
14 from our initial observation, where we initially  
15 stopped it.

16 Q. Once the door was closed on the vehicle,  
17 how was the defendant extracted from the door?

18 A. I yelled to the defendant, I wanted to see  
19 his hands. Now this all happens I can't walk you  
20 through it exactly, but someone secures his hands.  
21 They reach through the window and secure his hands  
22 and actually pulled through the window, through the  
23 driver's window, and I believe that would have been

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1 one of the three support people, which were either  
2 Perna, Kleckner, or --  
3 Q. Boyce?  
4 A. Or Boyce. They extract him from the  
5 vehicle. He is placed on the ground and he is  
6 handcuffed and searched.  
7 At that time I move from my position to go  
8 around to the passenger side of the pickup truck. I  
9 open up the door to make sure there aren't any  
10 additional people laying on the front or passenger  
11 side of the pickup. I know that Mr. Glandine does  
12 not have the gun that they observed on his hip while  
13 he is on the ground now. I go to the console and  
14 flip open the console, and when I flip open the  
15 console I notice a, what appears to be a revolver in  
16 a black leather holster. Also next to the revolver  
17 is a blue satin-like tie bag next to it. I opened  
18 up the satin tie bag and saw that there was three  
19 plastic pill bottles, which I spilled on the front  
20 seat driver's seat of the van, and --  
21 Q. Did you disturb the pill bottles after  
22 that?  
23 A. No. I stopped them right where they were,

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Robert Kracyla - Direct

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1 just opened up the blue belted bag, dumped the  
2 contents on the passenger seat, and left it there  
3 for the investigators.

4 Q. At this point you knew the defendant was  
5 wanted out of the State of Maryland?

\*7 A. Yes. I knew it the entire time while I  
8 was driving down the road and when I exited his  
9 house until the time he was taken into custody.

10 MR. O'CONNOR: Your Honor, may I have two  
11 pictures marked for identification purposes?

THE COURT: You may.

(The witness resumed the witness stand.)

13 THE CLERK: They have been marked as State  
14 for Identification C and D.

15 (State's Exhibit C and D marked for  
16 identification.)

MR. O'CONNOR: May I approach the witness?

THE COURT: You may.

BY MR. O'CONNOR:

20 Q. I am going to hand you what is marked  
21 State's for Identification C. Do you recognize  
22 that?

23 A. Yes. That is the weapon I observed in the

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Robert Kracyla - Direct

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1 console section of the truck.

2 Q. Subsequent to you opening up the console  
3 that evening?

A. That's correct.

5 Q. I am going to hand you what has been  
6 marked as State's for Identification D. Do you  
7 recognize that picture?

8 A. Yes. That's the satin bag that was right  
9 next to the weapon in the console that I opened up  
10 and spilled the contents on the front seat.

Q. The Crown Royal bag?

A. That's correct.

13 MR. O'CONNOR: Your Honor, the State moves  
14 State's for Identification C and D as the next  
15 State's Exhibits.

THE COURT: Any objection?

17 MR. SCHMID: None for purposes of this  
18 hearing, Your Honor.

19 THE COURT: Mark the items as State's  
20 Exhibits.

21 THE CLERK: They have been marked as  
22 State's Exhibits 4 and 5.

23

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Robert Kracyla - Direct

Robert Kracyla - Direct

1 (State's Exhibit 4 and 5 received into  
2 evidence.)  
3 BY MR. O'CONNOR:  
4 Q. Sergeant Kracyla, did you follow standard  
5 operating procedure in effectuating this felony stop  
6 on this vehicle?  
7 A. Yes, sir. This is a felony stop that we  
8 conduct as a normal course of business as a tactical  
9 team or SORT Team. We train 246 hours a year during  
10 that training period. Felony car stops are normally  
11 part of our training period. Normal training  
12 routine.  
13 Q. With respect to the ramming of the vehicle  
14 from the pickup truck into the defendant's vehicle,  
15 is that at a high rate of speed?  
16 A. No. That would probably be at five miles  
17 an hour or less.  
18 MR. O'CONNOR: Your Honor, if I could have  
19 one other item marked for identification purposes.  
20 THE COURT: You may.  
21 THE CLERK: It has been marked as State's  
22 for Identification E.  
23

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1 (State's Exhibit E marked for  
2 identification.)  
3 BY MR. O'CONNOR:  
4 Q. I am going to hand you what has been  
5 marked as State's for Identification E. Do you  
6 recognize that?  
7 A. Yes. That would be his vehicle. It is  
8 the Dodge Ram.  
9 Q. Do you see any outward damage to the rear  
10 of the vehicle from this tap performed by the State  
11 Police?  
12 A. No, I don't see any damage.  
13 Q. Anything significant at all?  
14 A. No.  
15 MR. O'CONNOR: State would move this as  
16 the next State's Exhibit.  
17 THE COURT: Mr. Schmid.  
18 MR. SCHMID: Nothing, Your Honor.  
19 THE COURT: Mark it as the next State's  
20 Exhibit.  
21 THE CLERK: Marked as State's Exhibit 6.  
22 (State's Exhibit 6 received into  
23 evidence.)

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1 BY MR. O'CONNOR:  
2 Q. Sergeant Kracyla, subsequent to the arrest  
3 of the defendant at the site of the traffic stop,  
4 did you then participate in execution of a search  
5 warrant at the residence?  
6 A. Yes, sir, I did.  
7 Q. Can you describe to the Judge what you did  
8 at that location?  
9 A. That location, we were fairly confident  
10 that there was no one inside. However, any time  
11 executing a warrant we can never take anything for  
12 granted. We made entry into the residence and  
13 cleared the residence. Basically our job is just to  
14 clear the residence for any bodies inside, at which  
15 time we made entry, cleared the residence based on  
16 the search warrant, and there was no one inside when  
17 we cleared the residence.  
18 Q. Did you announce you were executing the  
19 search warrant?  
20 A. Yes. That is standard operating procedure  
21 making an announcement at the door.  
22 Q. Did you find anybody else inside?  
23 A. No.

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Official Court Reporter

Robert Kracyla - Direct

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1 Q. Once the residence was cleared, means that  
2 there was no one else inside. What did your team  
3 do?  
4 A. As we always do, we turned the  
5 investigation over to the drug unit guys, who are  
6 the investigators, and they are the ones that take  
7 care of the actual search.  
8 Q. You subsequently follow that up with a  
9 debriefing?  
10 A. We always debrief the operation and we  
11 fill out our -- an after action report, which is  
12 kind of a debriefing report.  
13 Q. Was that done in this case?  
14 A. Yes.  
15 MR. O'CONNOR: If I could have one second,  
16 Your Honor.  
17 THE COURT: All right.  
18 MR. O'CONNOR: No further questions at  
19 this time.  
20 THE COURT: You may cross-examine.  
21 CROSS-EXAMINATION  
22 BY MR. SCHMID:  
23 Q. Sergeant Kracyla, you referred to a

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Official Court Reporter

Robert Kracyla - Cross

Robert Kracyla - Cross

1 debriefing report?

2 A. After action report.

3 Q. Is that after action report which you  
4 referred to at some point during your testimony and  
5 direct examination?

6 A. Yes.

7 MR. SCHMID: Your Honor, I do not have a  
8 copy of that debriefing report, would like to be  
9 provided with a copy and at least a brief  
10 opportunity to review it.

11 THE COURT: All right.

12 MR. O'CONNOR: It has been done, Your  
13 Honor.

14 MR. SCHMID: I now have that in my hand.  
15 I would like to have some time to look it over, if I  
16 may.

17 THE COURT: How long is it?

18 MR. SCHMID: Two pages long, handwritten.  
19 Could I have at least five minutes?

20 THE COURT: The Court will stand in recess  
21 for ten minutes.

22 (A brief recess was taken.)

23 THE COURT: Mr. Schmid.

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Official Court Reporter

1 MR. SCHMID: Thank you, Your Honor.

2 BY MR. SCHMID:

3 Q. Officer Kracyla, you would agree that you  
4 strive for speed in these stops, correct? And I  
5 don't mean speed when you are coming up on the  
6 vehicle so much as how this stop unfolds, you want  
7 to do it as quickly as possible; correct?

8 A. We attempt to overwhelm the operator,  
9 correct. Kind of speed is our friend when it comes  
10 to movement, and I am not talking about vehicle  
11 movement. It is movement of the team to assigned  
12 areas.

13 Q. So in fact the trailing van that has the  
14 stop team in it is already moving forward before the  
15 vehicle is fully stopped, correct? Once the target  
16 vehicle has been boxed front and back, the van is  
17 already pulling up beside it?

18 A. That's correct.

19 Q. Even before it is fully stopped?

20 A. Normally we like to get that vehicle  
21 secured, and that is what the jam vehicle's purpose  
22 is, to go ahead and secure the vehicle, and then we  
23 go ahead and make our movement to deploy.

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Official Court Reporter

Robert Kracyla - Cross

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1 Q. And then you are not necessarily waiting  
2 until the van has come to a complete stop before the  
3 door is open and people be deploying; correct?

4 A. We should, and we don't want to be running  
5 out of a moving van, but it is either stopped or  
6 very, very close to being stopped.

7 Q. Okay. Nonetheless, the hallmark is haste?

8 A. Not haste.

9 Q. Quickness?

10 A. Quickness.

11 Q. Very good. Now, it was just a very quick  
12 moment from the time that the door opened until in  
13 fact Mr. Glandring was sticking his hands out the  
14 window and his hands were being secured; correct?

15 A. That's correct.

16 Q. Okay. And it was within an instant, I  
17 will describe it, from the time that his hands were  
18 secured until he was out of the truck and on the  
19 ground; correct?

20 A. Very quickly.

21 Q. Okay. There was no opportunity for any  
22 significant activity inside the truck by  
23 Mr. Glandring; correct?

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Robert Kracyla - Cross

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1 A. The opportunity would have come when he  
2 first noticed the doors opening in the van and he  
3 started to retreat back into the -- back into his  
4 vehicle, but he never got the opportunity.

5 Q. But in fact the entire time you see his  
6 face because he is backing up into the truck and the  
7 door is still open, when the shield hits the door;  
8 correct?

9 A. Well, when you say "open" or when I said  
10 "open," the door wasn't opened that I could see into  
11 the vehicle. The door was opened.

12 Q. Wasn't fully opened?

13 A. Maybe a foot perhaps, but I could not see  
14 from his waist -- correction -- from his waist up --  
15 correction -- waist down.

16 Q. But he was still looking at the activities  
17 that were occurring on the driver's side of the  
18 truck the entire time; correct?

19 A. It was my assumption that he was basically  
20 investigating what was going on behind him when he  
21 exited his vehicle.

22 Q. What I am saying is that at the time this  
23 door is being pushed closed by the shield --

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Robert Kracyla - Cross

Robert Kracyla - Cross

1 A. Correct.

2 Q. -- and while everyone else is deploying  
3 you with this either sub machine gun or shotgun, the  
4 weapon in your hands and the others, Mr. Glanding is  
5 looking at you, and looking at the man with the  
6 shield, and looking at everyone else jumping out of  
7 the van; correct?

8 A. I don't know what he was looking at.

9 Q. Okay. When he was searched, he was found  
10 to have in his possession a large black leather  
11 wallet; correct?

12 A. I can't say for sure.

13 Q. Okay. Did you notice that he had  
14 something on his belt?

15 A. I didn't notice, no, I didn't.

16 Q. A knife or something else in a sheath or  
17 pouch?

18 A. I didn't notice. However, I later found  
19 that he did have a knife in his possession.

20 Q. Okay. Did he also have a Leatherman or  
21 other similar device in a leather pouch?

22 A. I don't recall, sir.

23 Q. Okay. When he was out of the vehicle, he

1 was pulled out through the open window, there was no  
2 opportunity for him to get back up off of the  
3 ground, was there?

4 A. That's correct.

5 Q. You had him down with overwhelming force,  
6 as you describe it; correct?

7 A. I didn't describe it as overwhelming  
8 force.

9 Q. Did you say that you tried to overwhelm  
10 the individual that you are trying to stop?

11 A. With speed and quick movement.

12 Q. Yes?

13 A. Correct.

14 Q. He was on the ground, there was more than  
15 one person there, restraining him; correct?

16 A. Just the force necessary to make the  
17 arrest.

18 Q. Okay. I am trying to help to flesh out  
19 his possible opportunity to get up. There was none;  
20 correct?

21 A. No, there was no opportunity to escape.

22 Q. Okay. And therefore he was -- when you  
23 began your search, was he still on the ground or had

SHEILA A. DOUGHERTY  
Official Court ReporterSHEILA A. DOUGHERTY  
Official Court Reporter

Robert Kracyla - Cross

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1 he already been moved to one of the vehicles?

2 A. We as standard operating procedure, we as  
3 the tactical team conduct a pat down search of all  
4 our defendants and pretty much turn all the  
5 evidentiary work over to the investigators. We are  
6 typically patting down for weapons.

7 I was not involved in the search directly.  
8 And I am sure that the people in the -- that  
9 actually took him into custody were the ones that  
10 actually patted him down.

11 Q. You had no fear that he was going to be  
12 able to retrieve anything out of that truck to use  
13 it against you once he was in custody?

14 A. Once he was in custody, I was sure that he  
15 couldn't get back into the truck.

16 Q. Um-hum. Okay. And again, just to make  
17 sure that I understand, you got him out of that  
18 truck very quickly, in a matter of seconds, didn't  
19 you?

20 A. Specifically me, no, but the team did.

21 Q. The team you are the face for, the team  
22 you are the team leader; correct?

23 A. Correct.

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Official Court Reporter

Robert Kracyla - Cross

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1 Q. You and your team got him out within a  
2 matter of seconds?

3 A. That is correct.

4 Q. Okay. And in fact, at the time of the  
5 stop he was -- the door opened one foot out, partway  
6 out of the vehicle, and you forced him back in and  
7 then pulled him back out through -- you and your  
8 team forced him back into the truck and pulled him  
9 out through the window?

10 A. That's correct.

11 Q. Okay. All of your activities at the scene  
12 involved the stop and arrest slash detention of  
13 Mr. Glanding; correct?

14 A. And also the executing of the search  
15 warrant back at the residence.

16 Q. First of all, with respect to the vehicle  
17 out at 300 and --

18 A. Lion Hope.

19 Q. Lion Hope Road; correct?

20 A. Our involvement was the planning and the  
21 actual execution of that plan. And when it is  
22 according to plan, other than Detective Wright did  
23 not get an opportunity to go ahead and jam from the

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NOT GUN  
Have a Leatherman

1 front.

2 Q. You did not have any direction to conduct  
3 a thorough search or an inventory search of the  
4 vehicle; correct?

5 A. Were we directed upon?

6 Q. Correct.

7 A. No, but we always clear the vehicle for  
8 other occupants.

9 Q. Well, once the vehicle was cleared of  
10 other occupants, you had no specifically assigned  
11 duties to conduct an inventory or other search of  
12 the vehicle for evidence; correct?

13 A. That is not part of my duties to go do an  
14 inventory search.

15 Q. Okay.

16 MR. SCHMID: Nothing further, Your Honor.

17 THE COURT: Mr. O'Connor.

18 REDIRECT EXAMINATION

19 BY MR. O'CONNOR:

20 Q. Did you understand the car was going to be  
21 towed?

22 A. Yes.

23 Q. Did you know whether or not the defendant

1 had a gun in that vehicle?

2 A. I did not know at the time, no, sir.

3 Q. Did you have information that would lead  
4 you to have concerns that he did?

5 A. Yes, because the SO's had told us that he  
6 had a weapon on his person when he was outside of  
7 the house maybe an hour prior to him leaving.

8 Q. Mr. Schmid asked you -- made a statement  
9 that you forced the defendant back into his truck;  
10 correct?

11 A. That's correct.

12 Q. And you didn't shove his legs back up in  
13 the -- correct?

14 A. No. I believe the -- when I say "forced,"  
15 he may have retreated back, kind of retreated back  
16 into the truck himself because he saw the movement  
17 coming toward him. And the shield may have pushed  
18 the door closed, I am not real sure, but he wasn't  
19 actually pushed into the vehicle.

20 Q. His choices were limited at that point?

21 A. He really had no choice.

22 MR. O'CONNOR: No other questions.

23 THE COURT: Mr. Schmid.

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Robert Kracyla - Redirect

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1 MR. SCHMID: Nothing further, Your Honor.

2 RECROSS-EXAMINATION

3 BY THE COURT:

4 Q. You said earlier that his hands were  
5 secured when he was in the vehicle before he was  
6 extracted?

7 A. That's correct.

8 Q. How were his hands secured?

9 A. I just remember one of the team members,  
10 and I don't recall who it was, grabbed his hands so  
11 he wouldn't have an opportunity to go ahead and go  
12 for a weapon if it was either on his hip or  
13 somewhere else in the vehicle. I remember them,  
14 someone, going up there and securing his hands as he  
15 was -- had his hands up, and they grabbed his hands.

16 Q. This was when he was in the vehicle?

17 A. This is when he was in the vehicle. The  
18 shield was placed against the driver's window, I was  
19 covering his hands, I was watching his hands  
20 specifically, and I saw someone grab his hands to go  
21 ahead and take control of his hands.

22 Q. To get him out the door rather than  
23 through the window, that person would have had to

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Robert Kracyla - Recross

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1 let go of his hands?

2 A. Your Honor, I am not sure which person  
3 actually secured his hands so I don't know what  
4 their positions was and who actually placed their  
5 hands on his hands to remove him from the vehicle.

6 Q. Well, the officer was outside the vehicle;  
7 correct?

8 A. Yes.

9 Q. The door was closed?

10 A. The door was closed.

11 Q. He is holding his hands to get him out of  
12 the window, he comes through the window and grabs  
13 his hands?

14 A. That's correct.

15 THE COURT: Any other questions in view of  
16 the Court's inquiry?

17 MR. O'CONNOR: None from the State.

18 RECROSS-EXAMINATION

19 BY MR. SCHMID:

20 Q. Was Mr. Glanding invited to voluntarily  
21 exit the vehicle?

22 A. It happened so quickly, he was removed  
23 within seconds.

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Official Court Reporter

*the Police forced me back  
into my truck so they could  
have probable cause to search my  
vehicle*

*No I thought I was being robbed*



Robert Kracyla - Recross

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1 Q. So there was no opportunity for anyone  
2 there at the scene to make that invitation because  
3 he was just pulled out that quickly?  
4 A. Correct.  
5 Q. Which is consistent with how the rest of  
6 the stop unfolded, just that quickly; correct?  
7 A. I would say from the time the team  
8 deployed from our van to the time he was secured and  
9 handcuffed on the ground was five seconds.  
10 MR. SCHMID: Thank you.  
11 Nothing further, Your Honor.  
12 THE COURT: Mr. O'Connor.  
13 MR. O'CONNOR: Nothing further, Your  
14 Honor.  
15 THE COURT: You may step down.  
16 (The witness stepped down.)  
17 THE COURT: Mr. O'Connor.  
18 MR. O'CONNOR: Your Honor, if I can just  
19 review my notes from the ground for the motion.  
20 THE COURT: You may.  
21 MR. O'CONNOR: Your Honor, I don't believe  
22 the State is going to offer any more evidence at  
23 this time.

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1 THE COURT: Mr. Schmid.  
2 MR. SCHMID: If I may have a moment, Your  
3 Honor.  
4 THE COURT: You may.  
5 MR. SCHMID: Nothing from the defense,  
6 Your Honor.  
7 THE COURT: All right. I will hear your  
8 arguments. Mr. Schmid.  
9 MR. SCHMID: Well, Your Honor, although  
10 there is a -- first of all, it is clear with respect  
11 to the vehicle stop and search that there was no  
12 search warrant. And the only asserted basis for the  
13 stop was an arrest warrant for the Maryland arrest,  
14 and therefore this stop and any search would be a  
15 search incident to an arrest.  
16 The case law -- now, there was, as he  
17 suggests, that the search warrant also covered any  
18 vehicles found at the scene, but obviously there is  
19 also evidence this vehicle was not stopped at the  
20 scene, this vehicle was not searched at the scene.  
21 I would assert that this vehicle is not a part of  
22 that search warrant, and that any search warrant  
23 that issued would not include that vehicle.

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*I NEVER did go TO MARYLAND  
NO DETAINERS HERE AT D.C.C. EITHER*

1 There is abundant evidence to suggest how  
2 quickly this stop and seizure of Mr. Glanding  
3 occurred. Five seconds, remarkably short period of  
4 time. We assert that Mr. Glanding was out of the  
5 vehicle before there was any opportunity to either  
6 grab a weapon or destroy evidence.  
7 Under the Delaware case law, the only two  
8 bases would be to assure that evidence would not be  
9 destroyed or for officer safety, that no weapon  
10 could be grabbed. Essentially the wing span rule.  
11 The wing span that would be measured for  
12 Mr. Glanding in this instance would be his wing span  
13 while on the ground outside the vehicle, and  
14 therefore any search conducted there in the vehicle  
15 was unnecessary and not supported by the case law.  
16 We assert under the circumstances then  
17 that the discovery of that weapon under those  
18 circumstances is not supported by the case law and  
19 would not therefore be an item that is available to  
20 the State for proper evidence and should be  
21 suppressed along with the drugs.  
22 With respect to -- I had also expressed  
23 some concern with the timing on the search warrant.

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1 I will state that I acknowledge that according to  
2 the evidence presented here during this hearing that  
3 the officers had in their possession a search  
4 warrant presented through the proper means to the  
5 Superior Court, and that a signature does appear to  
6 have been obtained prior to the time of the search  
7 of the residence.  
8 THE COURT: All right. So the validity of  
9 the warrant itself is not challenged?  
10 MR. SCHMID: No, it is not, Your Honor.  
11 THE COURT: Did the warrant establish  
12 probable cause to search the vehicle that was  
13 located on the premises?  
14 MR. SCHMID: The reason I am asking that  
15 is if the vehicle is observed on the premises and  
16 then it is observed leaving the premises, as  
17 officers are about to execute a search warrant, the  
18 probable cause --  
19 THE COURT: Did the authority under the  
20 warrant evaporate when the vehicle was taken from  
21 the premises? Is that what you are saying?  
22 MR. SCHMID: What I am going to suggest is  
23 just that, Your Honor. I am going to assert that

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*Improper Search*

*INEFFECTIVE ASSISTANCE  
OF COUNSEL.  
VEHICLES ON THE PROPERTY  
NOT 1/2 MILE AWAY*



1 under the circumstances if the vehicle leaves the  
2 premises it is no longer described within the search  
3 warrant as being all vehicles on the premises.

4 THE COURT: Was it a vehicle on the  
5 premises at the time the warrant was authorized?

6 MR. SCHMID: Actually I don't know, Your  
7 Honor. There is no evidence to state one way or the  
8 other.

9 THE COURT: Can that be inferred from the  
10 evidence?

11 MR. SCHMID: Your Honor, I don't think  
12 that I am in a position to concede that, but I don't  
13 know that it can be inferred from the evidence. I  
14 would not so infer.

15 THE COURT: All right. Assuming that it  
16 may be inferred, do you have case law for the  
17 proposition that the defendant moving the vehicle  
18 eliminates the authority to search it?

19 MR. SCHMID: I do not presently have such  
20 case law, Your Honor. It was not something that I  
21 recognized the need to address at the time of my  
22 preparation, and I am not at this moment prepared to  
23 address that issue.

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Official Court Reporter

1 THE COURT: All right. So just so I  
2 understand what your position is now based on the  
3 evidence, you are seeking to suppress the items  
4 seized from the vehicle, the weapon and the drugs  
5 seized from the vehicle. That is the extent of your  
6 motion; is that correct?

7 MR. SCHMID: Yes, Your Honor.

8 THE COURT: Mr. O'Connor.

9 MR. O'CONNOR: Your Honor, to the extent  
10 that the Court was just asking Mr. Schmid questions  
11 about whether the authority for probable cause  
12 evaporates when the vehicle leaves the residence, I  
13 don't have an answer for that. I would argue that  
14 it does not.

15 I think that the search warrant itself  
16 does provide sufficient probable cause for a search  
17 of the vehicle in that it does refer to the fact  
18 that the defendant travels in vehicles to other  
19 locations in Maryland to engage in drug activity,  
20 which was part of the basis for the search warrant.

21 I don't have any specific case law on  
22 that, Your Honor. And I think another factor in  
23 that analysis, as Sergeant Kracyla testified, the

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1 police basically waited for the defendant to leave  
2 the residence because of their safety concerns with  
3 him and the firearm. I believe there has been  
4 testimony that it would have been more dangerous for  
5 them to go in his house while he was in there  
6 because they would not have as much control. To  
7 that extent, the State would assert that there was  
8 sufficient probable cause to search the vehicle  
9 pursuant to the warrant.

10 Assuming that that is legally incorrect,  
11 Your Honor, I think that the paramount concern in  
12 this take-down of the defendant was officer safety.  
13 The officers all testified they were aware of his  
14 violent record, they are aware that he is a drug  
15 dealer, a member of a Pagan motorcycle gang, that  
16 that day he was seen with a revolver, a firearm on  
17 his side, doing yard work. And while they didn't  
18 see him bring the gun into the vehicle, they had  
19 prior intelligence that says that he always travels  
20 with a gun, and that if he was ever stopped by the  
21 police he would shoot to kill a police officer.

22 I think that those concerns, legitimate  
23 concerns for officer safety are paramount in this

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They have to have  
Probable Cause

1 case when he was taken off.

2 When the -- there are several exceptions  
3 to the warrant requirement with respect to this  
4 case. The first is automobile exception. There is  
5 nothing about the automobile exception that says  
6 that the defendant has to be remained in the vehicle  
7 for the cops to be able to search it pursuant to the  
8 automobile exception. In fact, although I don't  
9 have the case, I read a case last week which I could  
10 likely locate quickly where Judge Slight ruled that  
11 a search of a vehicle subsequent to the arrest of  
12 the driver fit within the automobile exception  
13 pursuant to Belton, so I think that's a valid  
14 exception.

Should Know

15 THE COURT: Pursuant to what?

16 MR. O'CONNOR: Belton v. New York.  
17 Additionally, Your Honor, a SIVA search in this  
18 case -- search incident to valid arrest -- I believe  
19 applies. The location of the compartment where the  
20 gun was located was certainly within the defendant's  
21 wing span. Now, it is fairly clear that once the  
22 police got ahold of the defendant it appeared he had  
23 nowhere to go. But I think that that, the location

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1 of that gun was certainly within his wing span, and  
 2 even though he is removed from the car the police  
 3 are entitled to search that area of the vehicle.  
 4 Thirdly, the car was going to be towed.  
 5 The defendant was the only driver of the vehicle,  
 6 and it was intended that he would be arrested at the  
 7 time; so the police, whether it is considered an  
 8 inventory search at that time or whether an  
 9 inventory search would have been performed by  
 10 another member of the state police, Detective  
 11 Weaver, who was the evidence technician, inevitably  
 12 the police would have discovered the gun pursuant to  
 13 inventory search.

14 If the Court has some discomfort with the  
 15 fact that Sergeant Kracyla testified that he is not  
 16 there to search the car but he is there to clear the  
 17 car, but the gun would have been found anyway  
 18 pursuant to an inventory search, and you know,  
 19 pursuant to all of these exceptions to the warrant  
 20 requirement, and considering the potential perceived  
 21 dangerousness of this defendant, based on not only  
 22 his history but what the police observed that day,  
 23 and the statements that were relied on in the

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 Official Court Reporter

1 probable cause for the search warrant, which  
 2 Sergeant Kracyla stated that they did review prior  
 3 to formulating a plan, I think the police actions  
 4 were certainly appropriate and that the seized --  
 5 search and seizure of the contraband in the vehicle  
 6 was proper.

7 THE COURT: Mr. Schmid.

8 MR. SCHMID: Just a couple of  
 9 observations, Your Honor.

10 First of all, there isn't any indication  
 11 on Mr. Glanding's criminal history of violent  
 12 conduct that can be pointed to. That is not the  
 13 bases. This is rather conduct that an arrest  
 14 warrant was issued for at 11:30 that morning, which  
 15 is, as near as I can determine, the only violent  
 16 conduct on Mr. Glanding's record.

17 With respect to the search again, I assert  
 18 that that is on the basis of, as was described by  
 19 the SORT officer, officer safety, and to protect and  
 20 prevent any evidence from being destroyed, and again  
 21 I assert that with the quickness of the search or  
 22 rather the stop and the seizure, the fact that at  
 23 all times his hands were in view by the officers,

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1 there was no opportunity for anything to be  
 2 destroyed, otherwise secreted, and that in fact  
 3 therefore there was not within the vehicle a valid  
 4 basis for the search.

5 And if the Court wishes, I will undertake  
 6 to do research in order to try to find an answer to  
 7 the Court's question with respect to any case law on  
 8 the issue of a vehicle leaving the scene.

9 THE COURT: Mr. Clerk, hand me the  
 10 exhibits, please.

11 (Complied.)

12 THE COURT: Counsel, I am going to rule on  
 13 the motion after the recess. The Court is in recess  
 14 until 4:00 p.m.

15 (A brief recess was taken.)

16 \* \* \* \* \*

17 4:00 p.m.  
 18 Courtroom No. 2  
 The same day.

19 PRESENT: As noted.

20 \* \* \* \* \*

21 THE COURT: Mr. Clerk, here are the  
 22 exhibits returned to you.

23 Counsel, I have given careful

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1 consideration to the arguments and all the evidence  
 2 which has been presented at this hearing, including  
 3 the exhibits which have been introduced in the  
 4 course of the hearing. That issue is the lawfulness  
 5 of the search and seizure of the defendant's vehicle  
 6 upon his arrest.

7 I am satisfied from the evidence which has  
 8 been presented that the Delaware State Police had  
 9 the authority to stop and arrest the defendant  
 10 pursuant to the Maryland warrant which was  
 11 outstanding. I am also satisfied there was probable  
 12 cause to arrest the defendant not only based upon  
 13 the Maryland warrant, but also the direct  
 14 observations of the Delaware State Police of the  
 15 defendant which provided reasonable grounds to  
 16 believe that he possessed a firearm as a prohibited  
 17 person at the time of his arrest.

18 The search of the passenger compartment  
 19 area of the vehicle was contemporaneous with the  
 20 arrest of the defendant. That search is clearly  
 21 authorized under New York versus Belton, 453 U.S.  
 22 454, decided by the United States Supreme Court in  
 23 1981. Therefore, the search was lawful and the

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1 evidence will not be suppressed for that reason.

2 Additionally, the vehicle itself was the  
3 subject of a valid search warrant issued a few hours  
4 earlier by Resident Judge Vaughn. While the removal  
5 of the vehicle from the premises delayed the search,  
6 it was inevitable that the vehicle would be searched  
7 upon the defendant's arrest either pursuant to the  
8 warrant itself or for purposes of an inventory of  
9 the contents of the vehicle. Because the items  
10 found in the vehicle would have inevitably been  
11 discovered, this also provides a basis for the  
12 motion to suppress to be denied.

13 For all these reasons, the defendant's  
14 motion to suppress is denied.

15 Is there anything else prior to the trial  
16 tomorrow that I need to address? Well, first,  
17 Mr. Schmid, have I addressed all the arguments that  
18 you have raised?

19 MR. SCHMID: Yes. Thank you, Your Honor.

20 THE COURT: All right. Is there anything  
21 else to be addressed before tomorrow?

22 MR. SCHMID: Your Honor, Mr. O'Connor has  
23 indicated that he does not intend to present any

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1 that I need to go there, so until I think I do, I  
2 will ask the court before I do that.

3 THE COURT: All right. I will grant the  
4 defense application and order that there is to be no  
5 reference to any membership in the Pagan motorcycle  
6 club or gang without leave of the Court first  
7 obtained out of the jury's presence.

8 Counsel, for the record I want to advise  
9 you that after the jury was selected today Juror  
10 Number 7, Williemenia Heller, advised the bailiff  
11 that she had a doctor's appointment tomorrow, and  
12 she has apparently prior to selection today already  
13 been excused from jury service because of that  
14 appointment. She did not bring that to anyone's  
15 attention. Based on that earlier excusal and the  
16 fact that she has that appointment, she is excused  
17 and an alternate will be substituted in her place.

18 Any objection to that?

19 MR. SCHMID: No, Your Honor.

20 MR. O'CONNOR: No, Your Honor.

21 THE COURT: We will stand in recess until  
22 this trial at 10:00 a.m. tomorrow.

23 (The proceedings were adjourned.)

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1 evidence in the trial regarding Mr. Glandings's  
2 alleged ties to the Pagans. Although some  
3 references were made here at this hearing,  
4 nonetheless for the sake of the record, I do think  
5 that it is incumbent upon me to submit a formal  
6 written Motion in Limine regarding that issue in  
7 order to establish what the parameters will be for  
8 any reference that might be made at any point during  
9 the trial.

10 THE COURT: A written motion is  
11 unnecessary.

12 Mr. O'Connor, do you have any comment?

13 MR. O'CONNOR: Judge, if I intend to  
14 elicit anything about the Pagan organization I will  
15 seek leave of the Court first. I presently don't  
16 have any intention of doing that.

17 I explained to Mr. Schmid that a lot of  
18 the defendant's Pagan memorabilia, for lack of  
19 better description, was found in a locked safe, but  
20 in the safe with the guns, so if he tries to  
21 disclaim that the property in the safe was his,  
22 that's evidence that directly ties him to the  
23 contents of the safe. But presently I don't know

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# CERTIFICATE OF REPORTER

1 I, Sheila Dougherty, RMR and Official  
2 Court Reporter of the Superior Court, State of  
3 Delaware, do hereby certify that the foregoing is an  
4 accurate transcript of the testimony adduced and  
5 proceedings had, as reported by me, in the Superior  
6 Court of the State of Delaware, in and for Kent  
7 County, in the case therein stated, as the same  
8 remains of record in the office of the Prothonotary  
9 of Kent County, at Dover, Delaware.

12 WITNESS my hand this \_\_\_\_\_ day of  
13 \_\_\_\_\_, A.D., 2002.

18  
19 Sheila A. Dougherty, RMR  
20 Official Court Reporter  
21 Certification No. 142-PS  
22  
23



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE ) C.A. No. IK01-10-0159  
 ) through 0173  
 vs. )  
 HENRY W. GLANDING, JR., ) Appeal No. 236, 2002  
 I.D. No. 0105009486A )  
 Defendant. ) Trial Beginning:  
 ) March 4, 2002

\*\*\*\*\*

BEFORE: HON. HENRY DUPONT RIDGELY, PRESIDENT JUDGE,  
and a jury

\*\*\*\*\*

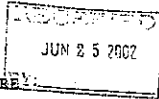
APPEARANCES:

MARTIN B. O'CONNOR, ESQUIRE  
Deputy Attorney General  
on behalf of the State of Delaware.

LLOYD A. SCHMID, ESQUIRE  
Assistant Public Defender  
Attorney for Defendant.

TRANSCRIPT OF TRIAL  
Volume B  
Tuesday, March 5, 2002

SHEILA A. DOUGHERTY  
Official Court Reporter



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Courtroom No. 1  
March 5, 2002.  
10:30 a.m.

PRESENT: As noted.

\*\*\*\*\*

(The jury was duly empaneled and sworn.)

\*\*\*\*\*

MR. O'CONNOR: Good morning, Your Honor.

THE COURT: Any application before the jury is brought in?

MR. O'CONNOR: One thing, Your Honor. My understanding, the defendant is going to stipulate that he is in fact a convicted felon at the time that he was arrested.

THE COURT: Do you have a written stipulation?

MR. O'CONNOR: I provided one to Mr. Schmid. I don't believe it has been signed yet.

MR. SCHMID: Yes, Your Honor. In point of fact that is my question. In conceding on the record that we are prepared to acknowledge that he did have a felony conviction prior to the time of this arrest, we wonder at the need for a written stipulation and would ask if the Court would

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undisputed and established fact beyond a reasonable doubt that the defendant was a convicted felon at the time of his arrest on May 11, 2001.

THE COURT: All right. Anything else?

MR. O'CONNOR: Your Honor, just to let the Court -- I sent Mr. Schmid a letter this morning which basically said I would like him to sign this stipulation, while not waiving basically any opportunity to raise what his conviction was, if the opportunity arose and if the Court allowed me to, because the convictions were a long time ago. I have some pretty high hurdles to get there, if we ever got there, but I put that in the letter to Mr. Schmid and I didn't want to let him think that I expressly waived that, but I know I've got some hurdles to climb if that ever came up and I had to go there.

THE COURT: All right. We will address that if it is necessary.

Is there anything else before the jury is brought in?

MR. O'CONNOR: Not from the State, Your Honor.

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consider accepting our stipulation on the record, and our acknowledgment that in fact we assume the State would be requesting, and the Court would then be instructing the jury as to the fact that he has already admitted that, without in fact requiring a written document.

THE COURT: Well, this is an element of the offense; is that right?

MR. O'CONNOR: That's correct.

THE COURT: Generally with regard to an element of the offense, a written stipulation that is signed and admitted as an exhibit.

MR. SCHMID: If I may have a moment, Your Honor.

THE COURT: You may.

Mr. Schmid.

MR. SCHMID: Your Honor, with leave of the Court, I have had an opportunity here to confer with my client, and after a review of the pros and cons in this matter, Mr. Glanding has elected to sign the stipulation which for the record reads briefly: On the 5th day of March, 2001, the above-referenced defendant, Henry B. Glanding, stipulates as an

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MR. SCHMID: No, Your Honor.

THE COURT: Are you requesting any sequestration order?

MR. SCHMID: Yes, we are.

MR. O'CONNOR: No opposition.

THE COURT: With the exception of the chief investigating officer, all witnesses are sequestered.

Bring the jury in.

(The jury came into the courtroom.)

THE COURT: Good morning, members of the jury. We appreciate your patience in the jury room.

The Court has excused Juror Number 7, so at this time I would ask Alternate Number 1 to take the seat of Juror Number 7.

(Complied.)

THE COURT: Henceforth I will be addressing you as Juror Number 7.

With regard to the instructions, members of the jury, that I gave you previously, I told you that you were not to discuss the case among yourselves nor with anyone else; that if anyone attempted to discuss the case with you to bring that

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Darren Short - Direct

1 as I was able to maintain my line of sight and  
2 communicate my intelligence.  
3 MR. O'CONNOR: May I have one second?  
4 Your Honor, may I have an item marked for  
5 identification?  
6 THE COURT: Mark the item for  
7 identification.  
8 THE CLERK: It has been marked as State's  
9 for Identification A.  
10 (State's Exhibit A marked for  
11 identification.)  
12 MR. O'CONNOR: May I approach the witness,  
13 Your Honor?  
14 THE COURT: Yes.  
15 BY MR. O'CONNOR:  
16 Q. Detective, I am going to hand you what has  
17 been marked as State's for Identification A. Do you  
18 recognize that?  
19 A. Yes.  
20 Q. What is it?  
21 A. It is a picture of the defendant's  
22 residence and the vehicles around his residence.  
23 MR. O'CONNOR: Your Honor, the State at

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Darren Short - Direct

1 this time moves State's Identification A as the  
2 first State's Exhibit.  
3 THE COURT: Any objection?  
4 MR. SCHMID: No, Your Honor.  
5 THE COURT: It is admitted. Mark it as a  
6 State's Exhibit.  
7 THE CLERK: It has been marked as State's  
8 Exhibit 1.  
9 (State's Exhibit 1 received into  
10 evidence.)  
11 MR. O'CONNOR: Your Honor, may I publish  
12 the photograph to the jury?  
13 THE COURT: Hand it to the bailiff.  
14 (Complied.)  
15 (Photograph was published to the  
16 jury.)  
17 BY MR. O'CONNOR:  
18 Q. Detective Short, I am going to hand you  
19 back State's Exhibit 1. Looking at -- what does  
20 that photograph represent?  
21 A. It represents where my position was. This  
22 is the tree line, this is what I had to shoot over  
23 with my scope. This was actually a video that I

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Darren Short - Direct

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1 took the day before I went out. This is with a Sony  
2 Handycam, and I had zoomed out so as to take -- we  
3 had to get the whole house, and in one picture, one  
4 frame.  
5 Q. Does the picture reflect the maximum view  
6 you had? In other words, were you able to see  
7 closer than that picture reflects?  
8 A. Yes, I was able to actually -- with the  
9 Leopold scope that I am assigned, I am able to  
10 actually zoom in on like the door, front door, the  
11 windows. I am able to bring it in so I can  
12 concentrate on a -- basically so a person with just  
13 a little bit of area around it, at this distance I  
14 would be able to fill my scope and I would be able  
15 to focus in on them and track them with my scope.  
16 This was just for intelligence purposes, so I zoomed  
17 out with the Handycam.  
18 Q. So you could get the whole house?  
19 A. So I could get the whole house, and so I  
20 could give it to the investigator that was handling  
21 the case so he would have a good view of the house  
22 and what we were dealing with as to vehicles,  
23 outbuildings, obstacles that may arise.

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Darren Short - Direct

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1 MR. O'CONNOR: If I can have one moment,  
2 Your Honor.  
3 BY MR. O'CONNOR:  
4 Q. What county was the defendant's residence  
5 in?  
6 A. Kent County, State of Delaware.  
7 MR. O'CONNOR: Your Honor, I don't have  
8 any other questions for this witness.  
9 THE COURT: You may cross-examine.  
10 CROSS-EXAMINATION  
11 BY MR. SCHMID:  
12 Q. Detective Short, just to make sure that I  
13 understand, you observed Mr. Glanding in and around  
14 the yard area?  
15 A. In the yard area, to and from the  
16 vehicles, and in and out of the house through the  
17 front door.  
18 Q. He was doing yard work?  
19 A. Yard work.  
20 Q. He was going back and forth to the vehicle  
21 getting fish, cleaning them?  
22 A. Yes.  
23 Q. Okay. And that's the extent of the

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Darren Short - Cross

1 observations that you made of Mr. Glanding; correct?

2 A. Routine activities.

3 Q. Yes. And during the course of these

4 observations, you saw something on his hip which you

5 believed was a firearm?

6 A. Yes.

7 Q. Now, isn't it in fact true that you were

8 in radio communication with someone who was

9 supervising your activities?

10 A. Yes, we had the --

11 Q. That was Detective Calloway; correct?

12 A. Detective Calloway was handling the

13 investigative end of it. There were several people

14 monitoring the radio.

15 Q. All right. During the course of your

16 observations you said, Gee, I think that this man

17 has a pistol on his hip?

18 A. I said it several times, that I believe it

19 to be, and I actually stated that it was a gun.

20 Q. Well, okay. But you through the course of

21 these observations said several times, Gee, I think

22 it is a gun; correct?

23 A. Not, Gee, I think it was a gun. I said,

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Darren Short - Cross

1 It appears to be a gun on his right hip.

2 Q. It appeared to be a gun?

3 A. It is a gun.

4 Q. Right. Now, during the course of these

5 observations, did you see anyone else come up to the

6 house?

7 A. No. My focus was on him.

8 Q. Well, I am not asking if your focus was on

9 him. You had a view of the front of the residence

10 and the driveway; correct?

11 A. Not that I recall.

12 Q. Thank you.

13 MR. SCHMID: Nothing further, Your Honor.

14 THE COURT: Mr. O'Connor.

15 MR. O'CONNOR: No further questions, Your

16 Honor.

17 THE COURT: The witness may step down.

18 (The witness stepped down.)

19 THE COURT: The State may call its next

20 witness.

21 MR. O'CONNOR: The State calls Detective

22 Rodney Layfield.

23 Your Honor, may Detective Short be

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Darren Short - Cross

1 excused?

2 THE COURT: Any objection?

3 MR. SCHMID: No, Your Honor.

4 THE COURT: He is excused.

5 \* \* \* \* \*

6 RODNEY LAYFIELD

7 \* \* \* \* \*

8 called as a witness on the part and behalf

9 of the State, being duly sworn, was

10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. O'CONNOR:

13 Q. Good morning, Detective Layfield.

14 A. Good morning.

15 Q. Detective Layfield, how long have you

16 worked for Delaware State Police?

17 A. I have been employed for approximately

18 eight years.

19 Q. What is your current assignment?

20 A. I am currently assigned to the Governors

21 Task Force in Sussex County, and also I am a member

22 of the Special Operations Response Team in the State

23 of Delaware.

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Rodney Layfield - Direct

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1 Q. What troop do you work out of?

2 A. Troop 4 in Georgetown.

3 Q. Were you working on May 11, 2001?

4 A. Yes, I was.

5 Q. And what was your assignment that day?

6 A. I was to observe a residence in Kent

7 County.

8 Q. And can you describe to the jury

9 approximately what time you started it and where you

10 were deployed?

11 A. Okay. We were deployed at approximately

12 one o'clock in the afternoon, about 1300 hours. We

13 moved into a position where we were able to observe

14 the target residence. I would say it took us about

15 45 minutes to an hour to get into position, so we

16 were observing the residence from approximately two

17 o'clock until later on that evening, and I believe

18 we extracted around nine o'clock, 2100 hours or so.

19 Q. Were you working with anybody else?

20 A. Yes, I was. I was also working with

21 another detective, Corporal Todd Thomas. He and I

22 were in a position together. When we normally

23 deploy to observe a residence, we go in pair of

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*Left woods Residence.*

MR. O'CONNOR: Your Honor, the issue that I want to raise with respect to Detective Calloway was testimony regards the fact that when he observed items in the safe, a number of those items were the defendant's items. The prejudicial part of the items is that they are all Pagan-related material. I wanted to inquire of the Detective whether or not he saw items of the defendant's clothing and other items that identified -- that were identified as being the defendant's in the safe, without going any further than that, to further establish that he had access to the interior of the safe.

I do not -- beyond that I don't want to get into that it is Pagan material because I understand Mr. Schmid will object. I don't really agree with him, but to the prejudicial value at this point, but that was the one question that I reserved asking Detective Calloway.

Quite frankly, we have a lot of evidence tying the defendant, sufficient evidence I believe tying the defendant to the home, to the vehicle, but not to the interior of the safe where a variety of these weapons were found.

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THE COURT: Make a proffer as to what you would like to do.

MR. O'CONNOR: Your Honor, I would like to ask the detective whether or not in addition to weapons found in the safe he located items of clothing and other objects which he identified as being the defendant's in the safe, with all the weapons and bullets and those kind of things.

MR. SCHMID: Your Honor, just to get the full context, as I understand it none of these items have the name Henry Glanding on them.

MR. O'CONNOR: They have his nickname, Hard Head, which is his Pagan nickname, all over them. I can have someone from the State Police intelligence unit testify outside the jury's presence that the defendant's nickname is Hard Head, or Detective Calloway can do that to establish the nickname and this defendant.

That is my only proffer, is that there was clothing and other items in the safe belonging to this defendant, and to the extent that --

THE COURT: What precisely was the clothing in the safe?

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*The word Pagan was supposed to be  
Banned from my trial shows  
Prejudice*

*NO CONSTRUCTIVE PROSECUTION*

MR. O'CONNOR: A Pagan motorcycle jean jacket.

THE COURT: What size jacket?

MR. O'CONNOR: It is the Pagan colors. Has the name tag of Hard Head on it. There was a walking stick, which is a staff kind of object that appeared to me to be made out of an ax handle, for lack of a better description, with the nickname Hard Head running down the front of it, which is common Pagan memorabilia.

There was also some other things that -- Your Honor, I have some photographs.

Judge, the first photograph is a close-up of the nickname on the jacket.

The second is a photograph of the jacket in the gun locker.

The third is a photograph of the front of the jacket, which has the nickname, which would be on the left side of the jacket.

The fourth is a photograph of the back of the jacket.

The fifth is a photograph of the gun locker, and in the bottom of the gun locker is

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*Banned from trial  
Prejudice*

*Pagan - Banned from trial on  
supposed to be Prejudice.*

reference to being one percent. That is referenced throughout the defendant's Pagan memorabilia.

THE COURT: I don't see that on this photograph.

MR. O'CONNOR: At the bottom, Your Honor. In the bottom you will see the one percent. It is white and red. The head of the Motorcycle Association of America said only one percent of motorcycle riders are convicted felons, and apparently some motorcycle groups take that as a badge of honor, being one percent.

THE COURT: Is that the diamond, the white diamond?

MR. O'CONNOR: Yes, Your Honor.

THE COURT: All right. Mr. Schmid.

MR. SCHMID: Your Honor, I have a request to make, and that is to only briefly show those photos to my client. There seems to be some question between us as to what is being referred to.

THE COURT: Hand these to Mr. Schmid.

THE BAILIFF: Yes, Your Honor.

MR. SCHMID: Thank you. Did the Court want the photos back?

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1 THE COURT: All right. Your response,  
2 Mr. Schmid, to the proffer.

3 MR. SCHMID: Well, Your Honor, we don't  
4 stand here to dispute that those items were found in  
5 the safe. Our concern is with the reference and how  
6 far it goes, the proffer is --

7 MR. O'CONNOR: The proffer is: Did you  
8 locate the defendant's jacket in the safe? Yes.

9 Did you locate other items that you  
10 identified as being personal property of the  
11 defendant's in the safe? Yes.

12 That's it. No reference even to his  
13 nickname.

14 MR. SCHMID: To the extent that that's the  
15 outer limit of what the State is going to do, we  
16 decline to offer any objection.

17 THE COURT: All right. You may proceed in  
18 that fashion.

19 MR. O'CONNOR: Thank you, Your Honor.

20 For the Court's information, I would like  
21 to briefly recall Detective Calloway and then I am  
22 going to be calling Detective Weaver.

23 Your Honor, there is a cart over here with

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1 a number of firearms, and the firearms and  
2 ammunition on the top. I had taken a photograph of  
3 all the ammunition, or actually three or four  
4 photographs, which I would substitute for the actual  
5 ammunition, assuming that there is no objection, for  
6 safety purposes.

7 There is a couple -- there are a couple of  
8 firearms that had the inventory still attached as  
9 far as presenting, but I would expect it to be cut  
10 off. Has the ammunition still attached to it. I  
11 would like to show the jury the ammunition and  
12 essentially swap the photos in evidence.

13 MR. SCHMID: I don't oppose that procedure  
14 with respect to the ammunition, Your Honor. I would  
15 ask, though, if those are a fair number of them, and  
16 they are rifles, if they could be premarked and have  
17 the identification sticker put on them before we get  
18 before the jury.

19 MR. O'CONNOR: I don't have any problem  
20 with that, Your Honor. The detective just came  
21 over. If you would like to do that now, we can.  
22 Really Detective Weaver is the next witness. I have  
23 two questions for Detective Calloway, so it may make

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1 sense to do that.

2 THE COURT: All right. All of the  
3 exhibits may be premarked. Hand them to the clerk  
4 and they will be marked for identification only. We  
5 will take a recess while that is done.

6 Court is in recess until the call of the  
7 court.

8 {A brief recess was taken.}

9 THE COURT: Are you ready to proceed?

10 MR. SCHMID: Yes, Your Honor.

11 THE COURT: Bring the jury in.

12 {The jury came into the courtroom.}

13 THE COURT: Good afternoon, members of the  
14 jury. We appreciate your patience in the jury room.  
15 We used the time you were there to do some things  
16 administratively to expedite the presentation of the  
17 evidence. In the long run there is that gain in  
18 terms of your time.

19 Mr. O'Connor, you may call your next  
20 witness.

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1 MR. O'CONNOR: Your Honor, the State  
2 briefly recalls Detective Calloway.

3 \* \* \* \* \*

4 MICHAEL CALLOWAY

5 \* \* \* \* \*

6 having been previously sworn as a witness,  
7 was resumed on examination and testified  
8 further as follows:

9 REDIRECT EXAMINATION

10 BY MR. O'CONNOR:

11 Q. Good afternoon, Detective.

12 A. Good afternoon.

13 Q. Detective, when you participated in the  
14 search warrant of the defendant's residence, did you  
15 have an opportunity to look inside of his gun  
16 cabinet?

17 A. That's correct.

18 Q. The gun cabinet?

19 A. That's correct.

20 Q. Did you observe a jacket belonging to the  
21 defendant in the gun cabinet?

22 A. Yes, I did.

23 Q. Did you observe other personal belongings

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David Weaver - Direct

David Weaver - Direct

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1 BY MR. O'CONNOR:

2 Q. Detective Weaver, have you had an  
3 opportunity to review --

4 THE COURT: Affix the remote microphone to  
5 the witness, Madam Bailiff.

6 (Complied.)

7 BY MR. O'CONNOR:

8 Q. Detective Weaver, in the two boxes on this  
9 cart are several evidence bags. Can you briefly  
10 tell the jury what is in them?

11 A. Inside of the bags contain ammunition that  
12 was seized from the gun cabinet that was located  
13 inside the living room. There is --

14 Q. If you can just take some out.

15 A. There is .20 gauge, .12 gauge ammunition,  
16 rifle slugs for .12 gauge, heavy game load for .12  
17 gauge. There are six. There were 17 303 cartridges  
18 that were inside of a Federal box.

19 Q. With respect to this envelope, is this the  
20 six bullets or cartridges that you found in the tan  
21 jacket in the defendant's vehicle?

22 A. Yes, sir. Black rifle powder and powder  
23 from Superior Mannitol.

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1 Q. What are those used for?

2 A. Used for black powder.

3 Q. Approximately how many live rounds of  
4 ammunition would you estimate were seized at the  
5 residence?

6 A. There was approximately 30 boxes of  
7 ammunition that was seized. Different size  
8 calibers.

9 Q. Did you have an opportunity to consider  
10 the caliber of the weapons and the caliber of the  
11 ammunition?

12 A. The ammunition that was located inside the  
13 gun cabinet was consistent with the weapons that  
14 were seized inside the residence.

15 MR. O'CONNOR: Your Honor, at this time we  
16 aren't going to be admitting the actual ammunition  
17 into evidence. The State would like to admit some  
18 photographs. We have now laid a foundation through  
19 Detective Weaver.

20 BY MR. O'CONNOR:

21 Q. Detective Weaver, I am handing you what  
22 has been marked as State's for Identification W.

23 A. This is photographs of the ammunition that

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Official Court Reporter

David Weaver - Direct

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1 was located inside the residence in the gun cabinet.

2 Q. State's for Identification Q?

3 A. More ammunition that was located inside  
4 the gun cabinet.

5 Q. State's for Identification Y?

6 A. Indicates more ammunition that was located  
7 inside the gun cabinet.

8 Q. State's for Identification Z?

9 A. This is the black powder rifle and other  
10 type of ammunition that was found inside the gun  
11 cabinet.

12 Q. Do the photographs represent the  
13 ammunition in evidence in these bags?

14 A. Yes, sir.

15 Q. Was all of the ammunition found in the gun  
16 cabinet, or are there different locations?

17 A. They were found inside of the gun cabinet.

18 Q. If one of your evidence bags indicates  
19 otherwise, for example, on top of the cabinet, would  
20 that be correct?

21 A. Yes. One indicates coffee table in the  
22 living room, another one with coffee table in the  
23 living room, top of the gun cabinet in the living

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David Weaver - Direct

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1 room, top of the washing machine, and inside the gun  
2 cabinet in the living room.

3 MR. O'CONNOR: Your Honor, the State would  
4 offer State's for Identification W, X, Y and Z as  
5 the next four State's Exhibits.

6 THE COURT: Any objection?

7 MR. SCHMID: No, Your Honor.

8 THE COURT: Mark the items as the next  
9 State's Exhibits.

10 THE CLERK: They have been marked as  
11 State's Exhibits 26 through 29 respectively.

12 (State's Exhibit 26, 27, 28 and 29  
13 received into evidence.)

14 (The witness resumed the witness stand.)

15 BY MR. O'CONNOR:

16 Q. Detective, with respect to the ammunition,  
17 the firearms and that evidence, did you follow  
18 standard operating procedure in seizing and logging  
19 that evidence in?

20 A. Yes. The evidence was recovered at the  
21 residence, taken back to Troop 3 and secured in our  
22 evidence locker.

23 MR. O'CONNOR: If I can have one moment,

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David Weaver - Direct

1 Your Honor.  
 2 No further questions for this witness,  
 3 Your Honor.  
 4 THE COURT: You may cross-examine.  
 5 MR. SCHMID: Thank you, Your Honor.  
 6 CROSS-EXAMINATION  
 7 BY MR. SCHMID:  
 8 Q. Detective Weaver, good afternoon.  
 9 A. Good afternoon.  
 10 Q. What time did you arrive at the vehicle  
 11 out on Lion Hope Road?  
 12 A. I arrived at 2040 hours.  
 13 Q. What is that in layman's terms?  
 14 A. I am sorry. 8:40 p.m.  
 15 Q. Okay. And how long were you there at the  
 16 vehicle?  
 17 A. I was there approximately an hour.  
 18 Q. And when you left the scene there, at the  
 19 vehicle, did you go directly to the residence?  
 20 A. Yes, sir.  
 21 Q. So you arrived there somewhere close to  
 22 ten o'clock?  
 23 A. Yes, sir.

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David Weaver - Cross

1 Q. And when you arrived there, what were the  
 2 officers there engaged in?  
 3 A. There were officers from our units that  
 4 were inside the residence doing a search of the  
 5 residence.  
 6 Q. Okay. And were they all standing around  
 7 waiting for you to arrive?  
 8 A. I don't recall. There were several that  
 9 were going to assist Detective Daisey, assisting  
 10 with the collection of evidence.  
 11 Q. My question has to do with were all of  
 12 these officers who were at the residence simply  
 13 doing nothing and waiting until you got there?  
 14 A. No, sir. There were officers doing  
 15 examinations.  
 16 Q. Okay. And prior to going out to the car  
 17 you hadn't been into the residence, right?  
 18 A. No, sir.  
 19 Q. Any idea what time the officers finished  
 20 up there at the house? The other officers, I mean?  
 21 A. I am not sure what time they had finished  
 22 up.  
 23 Q. What time did you finish?

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Official Court Reporter

David Weaver - Cross

1 A. We cleared out approximately 11:55 p.m.  
 2 Q. Were there other officers still at the  
 3 scene when you left?  
 4 A. I believe we had all left together.  
 5 Q. Okay. You identified three items as  
 6 having been on a gun rack; correct?  
 7 A. Yes, sir.  
 8 Q. They were a .20 gauge -- rather two .20  
 9 gauge shotguns and a .22 caliber rifle; correct?  
 10 A. Yes, sir.  
 11 Q. Was there also a BB gun there on the rack  
 12 that you recall?  
 13 A. I do not recall.  
 14 Q. Okay. Were all of the items still on the  
 15 rack at the time that you got there?  
 16 A. We collected, yes.  
 17 Q. When you were in the laundry room where  
 18 those items were found on the gun rack, did you  
 19 happen to notice what else was in the laundry area  
 20 there?  
 21 A. No, sir, I did not.  
 22 MR. SCHMID: Nothing further, Your Honor.  
 23 THE COURT: Mr. O'Connor.

SHEILA A. DOUGHERTY  
Official Court Reporter

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1 MR. O'CONNOR: No further questions, Your  
 2 Honor.  
 3 THE COURT: The witness may step down.  
 4 (The witness stepped down.)  
 5 THE COURT: Mr. O'Connor?  
 6 MR. O'CONNOR: If I could have one second,  
 7 Your Honor.  
 8 Your Honor, at this point the State rests.  
 9 THE COURT: Members of the jury, there is  
 10 going to be a recess before we consider anything  
 11 further in the courtroom. The bailiff will show you  
 12 to the jury room.  
 13 (The jury left the courtroom.)  
 14 THE COURT: Counsel come to sidebar on  
 15 scheduling.  
 16 (A sidebar conference was held off  
 17 the record.)  
 18 THE COURT: Court is in recess for 15  
 19 minutes.  
 20 (A brief recess was taken.)  
 21 MR. SCHMID: Your Honor, I had some  
 22 difficulty in locating Ms. Mullins. She has stepped  
 23 out. I have not yet been able to ask my client. I

SHEILA A. DOUGHERTY  
Official Court Reporter

1 needed to show her if she had access -- I am talking  
2 about the firearms. I need still to speak to my  
3 client about his intentions with respect to  
4 testifying.

5 THE COURT: All right. We will stand in  
6 recess for ten minutes.

7 (A brief recess was taken.)

8 THE COURT: Mr. Schmid, are you ready to  
9 proceed?

10 MR. SCHMID: Yes, we are, Your Honor, and  
11 I will advise the Court that my client will be  
12 testifying.

13 THE COURT: All right. Bring the jury in.  
14 (The jury came into the courtroom.)

15 THE COURT: Mr. Schmid, does the defense  
16 elect to present evidence?

17 MR. SCHMID: Yes, Your Honor.

18 THE COURT: You may call your witness.

19 MR. SCHMID: Defense calls Mary Mullins to  
20 the stand.

SHEILA A. DOUGHERTY  
Official Court Reporter

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Mary Mullins - Direct

1 Q. How old is Gregory?

2 A. Eleven.

3 Q. And Angela?

4 A. Eight.

5 Q. Did you live there May 11 of last year?

6 A. Yes.

7 Q. Now, did you hunt?

8 A. Yes, occasionally.

9 Q. When did you start?

10 A. At the age of 18.

11 Q. Pardon me for asking. How old are you  
12 now?

13 A. Thirty-two.

14 Q. So that is approximately 14 years you have  
15 been hunting?

16 A. Yes.

17 Q. Did you hunt after moving in with  
18 Mr. Glanding?

19 A. Yes.

20 Q. And how often?

21 A. Probably a total of eight times. Because  
22 of Girl Scouts I couldn't go every year.

23 Q. When you say "Girl Scouts," what do you

SHEILA A. DOUGHERTY  
Official Court Reporter

MRS. MULLINS GUN  
CABINET + GUNS.

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\* \* \* \* \*

MARY MULLINS

\* \* \* \* \*

4 called as a witness on the part and behalf  
5 of the Defense, being duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. SCHMID:

9 Q. Ms. Mullins, good afternoon.

10 A. Good afternoon.

11 Q. Where do you live?

12 A. 829 Lion Hope Road, Clayton, Delaware,  
13 19948.

14 Q. How long have you lived there?

15 A. Going on eight years.

16 Q. Is that also the residence of Henry  
17 Glanding?

18 A. Yes.

19 Q. Who else lives there?

20 A. My three children, Ashley, Gregory and  
21 Angela.

22 Q. How old is Ashley?

23 A. Thirteen.

SHEILA A. DOUGHERTY  
Official Court Reporter

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Mary Mullins - Direct

1 mean?

2 A. I have -- I am an assistant leader of a  
3 Girl Scout troop, and my older daughter, Ashley, and  
4 during the month of November we have cookie training  
5 and a cookie shoot off which we have to attend for a  
6 weekend at Grove Point in Maryland. So it sometimes  
7 fell on the weekend when hunting started, sometimes  
8 it didn't. And I also work at Boscov's when  
9 Christmas season starts, and I don't have the time  
10 to take off.

11 Q. Does that entail working overtime, too?

12 A. Yes.

13 Q. Now, did you bring any guns with you or  
14 did you acquire any guns after you got to the  
15 residence?

16 A. Yes, I did.

17 Q. Did you also acquire a unit to put them  
18 in?

19 A. Yes.

20 Q. What was that?

21 A. It was a gun cabinet.

22 Q. Where was that gun cabinet located?

23 A. At my residence right now.

SHEILA A. DOUGHERTY  
Official Court Reporter

1 MR. SCHMID: May I approach the  
2 prothonotary, Your Honor, to retrieve an exhibit?  
3 THE COURT: You may.  
4 MR. SCHMID: May I approach the witness,  
5 Your Honor?  
6 THE COURT: Yes.  
7 BY MR. SCHMID:  
8 Q. Ms. Mullins, I hand you what has been  
9 marked State's Number 4 and ask if you recognize  
10 that.  
11 A. Yes.  
12 Q. What is that?  
13 A. My gun cabinet.  
14 Q. Okay.  
15 MR. SCHMID: May I publish briefly to the  
16 jury, Your Honor?  
17 THE COURT: All right.  
18 MR. SCHMID: Thank you.  
19 (The exhibit was published to the jury.)  
20 BY MR. SCHMID:  
21 Q. Did you have any of your guns in that gun  
22 safe?  
23 A. Yes.

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Official Court Reporter

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Mary Mullins - Direct

1 of all in the courtroom? Did you say that is yours?  
2 A. Yes.  
3 Q. I show you Number 25, State's 25, a .22  
4 caliber rifle. Ask if you recognize that.  
5 A. Yes.  
6 Q. Whose is this?  
7 A. My son's.  
8 Q. Where did you get this?  
9 A. He got it from his grandfather in West  
10 Virginia.  
11 Q. Okay. I show you what has been marked  
12 State's Number 20, a .410 single-shot shotgun, and  
13 ask if you recognize that.  
14 A. Yes.  
15 Q. Could you please pull the seat a little  
16 closer to the microphone. Whose is this?  
17 A. .410 is my sons's.  
18 MR. O'CONNOR: Your Honor, if I could ask  
19 Mr. Schmid to repeat the exhibit number.  
20 MR. SCHMID: Number 20.  
21 MR. O'CONNOR: Thank you.  
22 BY MR. SCHMID:  
23 Q. Ms. Mullins, I show you what has been

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1 MR. SCHMID: Your Honor, may I retrieve  
2 certain of the exhibits from the prothonotary?  
3 THE COURT: Yes.  
4 MR. SCHMID: Thank you.  
5 BY MR. SCHMID:  
6 Q. I hand you State's Exhibit Number 12, a  
7 .45 caliber Connecticut Valley Arms black powder  
8 rifle, and ask if you recognize that. Please hold  
9 the barrel up or down. Who does that belong to?  
10 A. Me.  
11 Q. Okay. I hand you --  
12 THE COURT: Mr. Schmid, unless necessary  
13 to address at sidebar, you may show the firearm to  
14 the witness rather than handing it to her.  
15 MR. SCHMID: Thank you.  
16 BY MR. SCHMID:  
17 Q. I show you what has been marked State's  
18 23, a .20 gauge Remington 870 Express, and ask if  
19 you recognize that.  
20 A. Yes.  
21 Q. Whose is that?  
22 A. That is mine.  
23 Q. Could you please speak up for the benefit

SHEILA A. DOUGHERTY  
Official Court Reporter

Mary Mullins - Direct

1 marked State's Number 16, a .12 gauge semiauto  
2 shotgun with a scope, and ask if you recognize this.  
3 A. Yes.  
4 Q. Is this in the same form as it was when it  
5 was in the gun cabinet?  
6 A. No.  
7 Q. What is different about it?  
8 A. The scope has been taken off.  
9 Q. Okay. Would that make it difficult for  
10 you to recognize?  
11 A. Yes.  
12 Q. And whose is this?  
13 A. Mine.  
14 Q. Okay. Ms. Mullins, did you use these guns  
15 for hunting purposes?  
16 A. Yes.  
17 Q. Was there someone else who resided at the  
18 residence?  
19 A. They didn't live with us, but his --  
20 Mr. Glanding's -- two children visited us every  
21 other weekend for visitation rights.  
22 Q. Who are they?  
23 A. Henry Glanding III, and Frances Glanding.

SHEILA A. DOUGHERTY  
Official Court Reporter



1 Q. How old is Henry?  
 2 A. He just turned 12.  
 3 Q. And I am sorry, the daughter's name?  
 4 A. Frances.  
 5 Q. How old is Frances?  
 6 A. She just turned nine.  
 7 Q. And to your knowledge did Henry Glanding,  
 8 Junior, also have guns there in the house?  
 9 A. Yes.  
 10 Q. Did he come over to the house and shoot  
 11 them?  
 12 A. Yes, he did.  
 13 Q. The .22 caliber rifle?  
 14 MR. SCHMID: I am sorry. Your Honor, may  
 15 I retrieve one of the exhibits again, please?  
 16 THE COURT: Yes.  
 17 MR. SCHMID: In this instance, Your Honor,  
 18 I would ask for leave of the Court to be able to  
 19 have the witness closely examine the rifle. There  
 20 is an identifying mark I need to ask her to make  
 21 comment on.  
 22 THE COURT: All right.  
 23

SHEILA A. DOUGHERTY  
 Official Court Reporter

1 BY MR. SCHMID:  
 2 Q. Is there anything unique or peculiar to  
 3 this weapon which would assist you in identifying  
 4 it?  
 5 A. Yes. The little daisy.  
 6 Q. The flower mark on the top of the reserve?  
 7 A. Yes.  
 8 Q. Any writing or other marks there?  
 9 A. Yes, there is other marks, but I always  
 10 have identified it by the flower, the daisy.  
 11 Q. How did you refer to this weapon, its  
 12 country of origin? What did you call it?  
 13 A. What did I call it? I have always called  
 14 them a gun. I never --  
 15 Q. You didn't call it a Japanese gun?  
 16 A. No. Just a gun.  
 17 Q. Did you have some difficulties with  
 18 Mr. Glanding during the early part of last year?  
 19 A. Yes.  
 20 Q. And were there times when you left the  
 21 residence?  
 22 A. Yes.  
 23 Q. How long total would you say that you were

SHEILA A. DOUGHERTY  
 Official Court Reporter

Mary Mullins - Direct

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1 gone from the residence?  
 2 A. Overnight.  
 3 Q. But for the total number of days off and  
 4 on, what would that total have been all together?  
 5 A. We started having problems at Christmas,  
 6 so probably seven or eight times.  
 7 Q. A total of about a week's worth of days  
 8 that you left?  
 9 A. Yes.  
 10 MR. SCHMID: Nothing further, Your Honor.  
 11 THE COURT: You may cross-examine.  
 12 CROSS-EXAMINATION  
 13 BY MR. O'CONNOR:  
 14 Q. Ms. Mullins, who owns the residence at  
 15 829 Lion-Hope Road?  
 16 A. Mr. Glanding.  
 17 Q. And did he own it prior to you moving in?  
 18 A. Yes.  
 19 Q. With respect to this gun cabinet, do you  
 20 have a key to the gun cabinet?  
 21 A. Yes.  
 22 Q. Does anybody else have a key to the gun  
 23 cabinet?

SHEILA A. DOUGHERTY  
 Official Court Reporter

Mary Mullins - Cross

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1 A. Yes.  
 2 Q. Who?  
 3 A. I gave Mr. Glanding one.  
 4 Q. Aside from Mr. Glanding, does anybody else  
 5 have a key to the gun cabinet?  
 6 A. No.  
 7 Q. You have told the jury that you  
 8 occasionally hunt and you have three kids?  
 9 A. Yes.  
 10 Q. And you are working?  
 11 A. Yes.  
 12 Q. So it is fair to say you don't have much  
 13 time to hunt?  
 14 A. No.  
 15 Q. You stated that you brought the guns to  
 16 the residence. Did you buy the gun cabinet because  
 17 of your children, to keep the guns away from your  
 18 children as they were growing older?  
 19 A. Yes. I bought it when my first daughter  
 20 was born.  
 21 Q. You identified five guns on the gun  
 22 cabinet that were yours?  
 23 A. Yes.

SHEILA A. DOUGHERTY  
 Official Court Reporter

QUESTION NEVER ASK WHOM ALL GUNS WAS  
 REGISTERED TO, (MRS. MULLINS)  
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1 Q. If there was ammunition in the gun cabinet  
2 that didn't match your guns, was that your  
3 ammunition?  
4 A. No.  
5 Q. Whose ammunition would that be?  
6 A. I don't know.  
7 Q. If there was a gun in the gun cabinet that  
8 wasn't yours, from the five you identified, whose  
9 gun would that be?  
10 A. Either little Henry's or somebody else's.  
11 Q. But the defendant did have a key to the  
12 gun cabinet?  
13 A. Yes.  
14 Q. Did you own any handguns?  
15 A. I didn't, no.  
16 Q. So if there were three handguns seized by  
17 the police on May 11, none of those were yours?  
18 A. No.  
19 Q. If there were two handguns in the gun  
20 cabinet, neither of those handguns were yours?  
21 A. No.  
22 Q. Mr. Schmid asked you a question about  
23 whether you were off and on with Mr. Glanding. Do

SHEILA A. DOUGHERTY  
Official Court Reporter

1 you recall that?  
2 A. Yes.  
3 Q. That evening were you intent -- the  
4 evening of May 11 -- were you intending on staying  
5 at the house?  
6 A. No.  
7 Q. Where were you going to stay?  
8 A. I was going home to get clothes because I  
9 had a Girl Scout function that weekend, me and my  
10 two daughters..  
11 Q. There were -- were all the guns that you  
12 owned in the gun cabinet?  
13 A. Yes, they should have been.  
14 Q. So if there were guns in the washroom on  
15 the wall, those were not your guns?  
16 A. No..  
17 Q. You have testified that Henry, Junior, and  
18 I think you meant to say Henry III, the defendant's  
19 son?  
20 A. Little Henry.  
21 Q. Little Henry. Had some guns at the house,  
22 correct?  
23 A. Yes.

SHEILA A. DOUGHERTY  
Official Court Reporter

Mary Mullins - Cross

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1 Q. And why were those guns kept in Clayton?  
2 A. In Clayton at our residence?  
3 Q. Yes.  
4 A. Because he currently stays with his aunt  
5 in Baltimore, Maryland. She does not allow any of  
6 them.  
7 Q. So is it fair to say that the defendant  
8 was holding his guns for him at 829 Lion Hope Road?  
9 A. We were.  
10 Q. You both were. Have you ever seen the  
11 defendant hunt?  
12 A. No.  
13 Q. Never gone hunting with him?  
14 A. No.  
15 Q. If there were -- if there was ammunition  
16 in 829 Lion Hope Road that was not in the gun  
17 cabinet, was that your ammunition?  
18 A. I would say no because mine should have  
19 been locked up.  
20 Q. Was it the defendant's?  
21 A. I am not sure.  
22 Q. But it is fair to say that only you and he  
23 had access to the gun cabinet?

SHEILA A. DOUGHERTY  
Official Court Reporter

Mary Mullins - Cross

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1 A. Only us two had a key, yes.  
2 Q. And it was the defendant's house?  
3 A. Yes.  
4 Q. And no other adults lived there?  
5 A. No.  
6 Q. Had any other adults lived there since you  
7 moved in in 1996?  
8 A. Since I moved in, no.  
9 Q. You said that is about eight years ago?  
10 A. Yes.  
11 MR. O'CONNOR: Nothing further, Your  
12 Honor. If I could have a moment, Your Honor.  
13 THE COURT: All right.  
14 MR. O'CONNOR: No further questions.  
15 THE COURT: Mr. Schmid.  
16 MR. SCHMID: Thank you, Your Honor.  
17 REDIRECT EXAMINATION  
18 BY MR. SCHMID:  
19 Q. Ms. Mullins, who pays the utilities in the  
20 house?  
21 A. I do.  
22 Q. Do you make any other payments in the  
23 house?

SHEILA A. DOUGHERTY  
Official Court Reporter

Mary Mullins - Redirect

1 A. I currently am paying the mortgage, yes.  
 2 Q. And other associated taxes, et cetera?  
 3 A. Yes.  
 4 Q. Now, you were asked about ammunition. A  
 5 lot of the ammunition was purchased by you; correct?  
 6 A. Yes.  
 7 Q. At Boscov's?  
 8 A. Boscov's Department Store, yes.  
 9 Q. Was there any special occasion that  
 10 prompted you to buy any of this ammunition?  
 11 A. Boscov's is doing away with selling  
 12 weapons, so they had a sale on all their weapons and  
 13 ammunition. I get a 15 percent discount, so I  
 14 bought up what I could use.  
 15 Q. Was that a significant quantity?  
 16 A. Yes.  
 17 Q. Certain of the ammo has Boscov's price  
 18 tags on it.  
 19 A. Yes, they should.  
 20 Q. Is it fair to say that all the ammo that  
 21 has that tag on it you purchased?  
 22 A. Yes.  
 23 MR. SCHMID: Nothing further, Your Honor.

SHEILA A. DOUGHERTY  
Official Court Reporter

*JURY WAS INSTRUCTED  
ON THIS CASE TO  
FIND ME GUILTY*

1 not he knowingly possessed the guns and was a  
 2 convicted felon.

3 There is no element or defense in this  
 4 case whether the defendant knew that he wasn't  
 5 permitted to have the weapons, and I would ask that  
 6 Mr. Schmid be instructed not to go into that.

7 MR. SCHMID: I am passingly familiar with  
 8 the case where because the individual had not  
 9 been -- referring to Mr. Baumeister's cases --  
 10 because he had not been adequately advised of his  
 11 limitations with respect to the ownership or  
 12 possession of firearms, he was acquitted on a charge  
 13 of carrying, a person prohibited. So that is in  
 14 fact the case, that is the evidence.

15 I don't think it is appropriate for  
 16 counsel to limit my instruction, and if there is a  
 17 question about that I ask for a time to go to  
 18 the -- to call my witness and attempt to put our  
 19 case on.

20 MR. O'CONNOR: Your Honor, where I am  
 21 coming to is if the defendant was acquitted perhaps  
 22 the prosecutor would ask that he be excluded, but  
 23 for an indictment for evidence, and there is a

SHEILA A. DOUGHERTY  
Official Court Reporter

*MY ATTORNEY SHOULD OF  
USED THIS SPECIFICALLY*

1 THE COURT: Mr. O'Connor.  
 2 MR. O'CONNOR: Nothing further.  
 3 THE COURT: The witness may step down.  
 4 (The witness stepped down.)  
 5 THE COURT: Mr. Schmid?  
 6 MR. SCHMID: Your Honor, the defense calls  
 7 Mr. Glanding to the stand.  
 8 MR. O'CONNOR: Your Honor, may counsel  
 9 approach?  
 10 THE COURT: You may.  
 11 Swear the witness.  
 12 (The following proceedings occurred  
 13 at sidebar.)  
 14 MR. O'CONNOR: Your Honor, there has been  
 15 a suggestion that the defendant may or may not have  
 16 known that he was not allowed to possess firearms  
 17 because he is a convicted felon. I want to ask that  
 18 the Court instruct Mr. Schmid not to inquire in that  
 19 regard because it is not a valid defense, whether he  
 20 knew he was not allowed to possess firearms or not.  
 21 And secondly, that it would confuse the  
 22 jury and take away from the issues for which they  
 23 are to decide the case, that being that whether or

SHEILA A. DOUGHERTY  
Official Court Reporter

1 million reasons why that defendant may have been  
 2 acquitted, and I don't think that is basis for the  
 3 allowance of this type of a defense, which is not a  
 4 defense in this case, and for that reason I would  
 5 object. That is my reason, Your Honor.

6 THE COURT: All right. Counsel, knowledge  
 7 applies to the possession of a weapon but to the  
 8 prohibited person aspect of the case. Therefore,  
 9 any questions addressing knowledge that he was a  
 10 prohibited person is not relevant. You may of  
 11 course address the issue of knowledge to the extent  
 12 it is relevant as to the elements of this case.

13 (The proceedings at sidebar were  
 14 concluded.)

THE COURT: Mr. Schmid.

MR. SCHMID: Thank you, Your Honor.

\*\*\*\*\*

HENRY W. GLANDING, JR.

\*\*\*\*\*

20 called as a witness on the part and behalf  
 21 of the Defense, being duly sworn, was  
 22 examined and testified as follows:  
 23

SHEILA A. DOUGHERTY  
Official Court Reporter

*AMMO WAS DROPPED BECAUSE PROVIDED  
TO BE MRS. MULLINS'S*

*KNOWINGLY IS  
NOT ENOUGH CONSTRUCTIVE  
POSS. HAS TO BE  
PROVEN*

*JOHN WITH  
ME*

*IT IS RELEVANT WHETHER I  
NEW OR NOT. INEFFECTIVE COUNSEL!*

Henry W. Glanding, Jr. - Direct

Henry W. Glanding, Jr. - Direct

## DIRECT EXAMINATION

BY MR. SCHMID:

Q. Mr. Glanding, you reside at the residence on 829 Lion Hope Road; correct?

A. Yes.

Q. And your son also -- Henry, Junior, or III -- resided there with you on alternate weekends?

A. On alternate weekends, through the summer, like his birthday and some of the holidays. Sometimes it would be every weekend, sometimes the aunt would allow me to have him for two to three weeks through the summer.

Q. And you have seen several rifles, firearms, paraded here in the courtroom by the State?

A. Yes.

Q. Among them are .12 gauge and smaller gauge guns; correct?

A. Yes.

Q. Can you describe your understanding of what the difference would be between a .12 gauge, .20 gauge and a .410?

A. .12 gauge is the bigger person's gun, .20

gauge and .410 is for women. Some women shoot .12

gauge, .20 gauge and a .410 is usually for youth.

Q. Ms. Mullins has identified --

MR. SCHMID: Excuse me just a moment, Your Honor.

BY MR. SCHMID:

Q. -- has identified a .20 gauge and a .410 gauge as belonging to her. There are some other smaller gauge shotguns that are included in the list. Whose were there?

A. Her son was using one or two of the guns that were his, and my son was using four or five of the guns.

Q. With respect to the small caliber shotguns, where did they come from, the ones that belonged to Henry III?

A. One was a gift for Christmas.

Q. From who?

A. One come from Mary Mullins' uncle, which was a Christmas present.

Q. Okay.

A. One was a Christmas present from a friend of mine over in Maryland. Guy named Marty Allen.

SHEILA A. DOUGHERTY  
Official Court ReporterSHEILA A. DOUGHERTY  
Official Court Reporter

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Henry W. Glanding, Jr. - Direct

Q. Did any come from other family members?

A. Some come from relatives on my mother's side, some come from my father's side.

Q. What about the .22 caliber --

MR. SCHMID: Your Honor, may I retrieve one of the exhibits?

THE COURT: Yes.

BY MR. SCHMID:

Q. I show you Exhibit 14, State's Exhibit 14, a .22 caliber Marlin semiauto rifle, and ask if you recognize that.

A. Yes.

Q. Whose gun was that?

A. My son's.

Q. There is then black powder rifles and several .12 gauge shotguns, a couple of pistols in the house?

A. Yes.

Q. Do you acknowledge that you had those guns?

A. Yes.

Q. Did Ms. Mullins bring guns to the residence when she came to live with you?

SHEILA A. DOUGHERTY  
Official Court Reporter

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Henry W. Glanding, Jr. - Direct

A. Yes.

Q. Did she acquire other guns while she was there?

A. Yes.

Q. Those guns that she has identified --

A. Yes.

Q. -- they were not yours?

A. No.

MR. SCHMID: I have nothing further, Your Honor.

THE COURT: You may cross-examine.

## CROSS-EXAMINATION

BY MR. O'CONNOR:

Q. Mr. Glanding, Ms. Mullins has testified that five of the 15 guns were hers. Do you recall her testimony?

A. Yes.

Q. Of the remaining ten guns, it is your testimony they were either your son's or yours?

MR. SCHMID: Your Honor, may counsel approach?

THE COURT: You may. Court reporter come forward.

SHEILA A. DOUGHERTY  
Official Court Reporter

1 (The following proceedings occurred  
2 at sidebar.)  
3 MR. SCHMID: Your Honor, with apologies to  
4 the Court, as I have stood here in front of the  
5 bench I have recounted. I was going to object to  
6 what Mr. O'Connor proffered. He is in fact correct,  
7 and I apologize for that.  
8 THE COURT: All right.  
9 (The proceedings at sidebar were  
10 concluded.)  
11 THE COURT: You may proceed.  
12 MR. O'CONNOR: Thank you.  
13 BY MR. O'CONNOR:  
14 Q. Again, Ms. Mullins testified that five of  
15 the firearms were hers that she identified. Do you  
16 recall her testimony?  
17 A. Yes.  
18 Q. The remaining ten firearms that were  
19 recovered by the police are either yours or your  
20 son's?  
21 A. Both of ours, mine and my son's.  
22 Q. Correct. They are either yours or your  
23 son's or both, correct?

SHEILA A. DOUGHERTY  
Official Court Reporter

1 A. Yes.  
2 Q. And your son wasn't residing with you in  
3 Clayton; is that correct?  
4 A. Not on a permanent basis, no.  
5 Q. He would essentially leave his guns in  
6 your custody, and whenever he could come to your  
7 residence, whether it be at his birthday or during  
8 the summertime, he would then use the guns while he  
9 was there, right?  
10 A. Yes.  
11 Q. So you had possession of his guns in your  
12 residence despite the fact they were his?  
13 A. We both did.  
14 Q. The guns that were in the laundry room, do  
15 you recall the photograph of the firearms that were  
16 in the laundry broom?  
17 A. Yes.  
18 Q. Whose firearms were they?  
19 A. One was Mary Mullins', one was my son's,  
20 and one was her son's.  
21 Q. So if she testified that all of her guns  
22 were in the gun cabinet, she would have been  
23 mistaken?

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Henry W. Glanding, Jr. - Cross  
1 A. One of the 870's she testified was hers.  
2 The 870's was in on the gun cabinet.  
3 Q. In the gun cabinet. She could have been  
4 mistaken.  
5 A. Apparently.  
6 Q. The ammunition that does not conform to  
7 Ms. Mullins' guns was either yours or your son's  
8 both?  
9 A. Yes.  
10 MR. O'CONNOR: I don't have any other  
11 questions.  
12 THE COURT: Mr. Schmid.  
13 MR. SCHMID: No further questions, Your  
14 Honor.  
15 THE COURT: The witness may step down.  
16 (The witness stepped down.)  
17 THE COURT: Mr. Schmid?  
18 MR. SCHMID: The defense rests, Your  
19 Honor.  
20 THE COURT: Mr. O'Connor?  
21 MR. O'CONNOR: Nothing further from the  
22 State, Your Honor. I think we have a motion we need  
23 to make that was discussed at sidebar.

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1 THE COURT: All right. Members of the  
2 jury, I am going to excuse you until tomorrow  
3 morning at 10:00 a.m. by which time you should  
4 return to the jury room.  
5 I remind you: Do not discuss the case  
6 among yourselves nor with anyone else. Do not visit  
7 or view any premises or place involved, and do not  
8 read, view, nor listen to any accounts in the media  
9 about the case should there be any. I will inquire  
10 of you as I did this morning regarding compliance  
11 with the instructions concerning your conduct.  
12 Please return to the jury room tomorrow  
13 morning by 10:00 a.m. The bailiff will show you  
14 out.  
15 (The jury left the courtroom.)  
16 THE COURT: Mr. O'Connor?  
17 MR. O'CONNOR: Your Honor, I apologize to  
18 the Court. As a result of the stipulation signed by  
19 the defendant, the State would move to amend the  
20 indictment. The indictment identifies specifically  
21 the defendant's September 23, 1980 guilty plea to  
22 possession with intent to deliver methamphetamine.  
23 The State would ask that the Court amend that just

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MISS LEADING THE  
JURY. FLAUNTED INDICTMENT.  
SHOULD BE ASKED TO DISMISS!



1 to reflect that the defendant did possess a firearm  
2 after having been convicted of a felony, which I  
3 think was the agreed on -- was the intent of the  
4 stipulation between the State and the defense.

5 THE COURT: Mr. Schmid?

6 MR. SCHMID: That's correct, Your Honor,  
7 and for the record we do waive any objection at a  
8 later time with respect to that element of the  
9 offense requiring specificity as to the language.

10 THE COURT: All right. That amendment is  
11 so ordered as to each count.

12 MR. O'CONNOR: Thank you.

13 THE COURT: Counsel, I will meet with you  
14 in chambers upon the recess to address jury  
15 instructions. The trial is adjourned until tomorrow  
16 at 10:00 a.m.

17 (Whereupon the proceedings were  
18 adjourned.)

19 \* \* \* \* \*

20 In Chambers  
21 The same day.

22 PRESENT: As noted.

23 \* \* \* \* \*

THE COURT: Before I address jury

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1 instructions, are there any motions, other motions?

2 MR. O'CONNOR: None from the State, Your  
3 Honor.

4 THE COURT: Mr. Schmid?

5 MR. SCHMID: To be quite frank with you,  
6 Your Honor, I have --

7 THE COURT: Just answer yes or no for now  
8 because I want to --

9 MR. SCHMID: Yes, Your Honor. I will make  
10 a -- requesting a motion for judgment of acquittal  
11 on the basis of the five weapons identified by Mary  
12 Mullins as belonging to her.

13 THE COURT: All right. I will let you  
14 address that in a moment.

15 Mr. O'Connor, I would also like you to  
16 address the issue of the possession of firearm  
17 ammunition by a person prohibited, and the  
18 definition of ammunition under 1448(c) -- (a) --  
19 yes, that's correct, 1448(c), which provides: As  
20 used herein, the word "ammunition" shall mean one or  
21 more rounds of fixed ammunition designed for use in  
22 and capable of being fired from a pistol, revolver,  
23 shotgun or rifle but shall not mean inert rounds or

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1 expended shells, hulls or casings.

2 For the State, what evidence establishes  
3 that definition of that being capable of being fired  
4 in this case?

5 MR. O'CONNOR: Your Honor, my response  
6 would be that the State did proffer testimonial  
7 evidence that ammunition was seized from the  
8 defendant's residence by police officers who have  
9 basic knowledge of ammunition. In addition, that  
10 the State did provide evidence by way of photographs  
11 demonstrating specifically not just boxes of  
12 ammunition, but also actual cartridges, and while I  
13 would concede there is no testimony that any  
14 specific piece of ammunition referenced in the case  
15 was offered, which stated that it expressly could  
16 be, that each piece of ammunition or any piece of  
17 ammunition could be fired from a pistol, revolver,  
18 shotgun or rifle, there was testimony that there was  
19 ammunition found for each type of weapon.

20 The weapons were identified as revolver,  
21 shotguns, rifles, and then there is photographic  
22 evidence of the ammunition itself, and I think that  
23 it is reasonable to infer that a jury could

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1 reasonably infer that the evidence as presented is  
2 sufficient to conclude the State has established  
3 that it is ammunition.

4 THE COURT: All right. Your response to  
5 Mr. Schmid's earlier motion?

6 MR. O'CONNOR: I think in respect to that,  
7 I think Mr. Schmid's motion addresses the question  
8 of ownership by Ms. Mullins of the guns. The  
9 question for the jury is the possession of the  
10 weapons. I think it could reasonably be inferred  
11 that the defendant's joint access to the gun cabinet  
12 and her weapons, if they conclude that they were in  
13 fact hers, is sufficient to establish possession.

14 In addition, she did testify that she was  
15 not staying there, at least that evening, and on  
16 numerous occasions in the past, I believe she said  
17 from January to May of that year, she had stayed at  
18 another residence because of problems with the  
19 defendant, that he constructively possessed her  
20 firearms for her used in the light most favorable to  
21 the State.

22 I will acknowledge that her testimony  
23 certainly doesn't strengthen the State's case with

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1 respect to those firearms that she identified, but I  
2 think there is still a factual basis for the jury to  
3 conclude that he possessed them as opposed to owned  
4 them, which is what her basic claim was.

5 MR. SCHMID: And yet, Your Honor, there is  
6 no evidence as to what time she left, and  
7 interestingly enough, the only evidence for the  
8 evening of May 11 does not put him in the house at a  
9 time when she was not there. So with respect to  
10 that evening, no, it is not I believe shown that he  
11 had constructive possession at the time that she was  
12 not there.

13 And with respect to the other evenings in  
14 question, there is no evidence that those weapons  
15 were still in the house and that she did not take  
16 them with her. And so I think that devolves again  
17 to the issue of her claim of ownership and therefore  
18 dominion over those rifles.

19 MR. O'CONNOR: Except that the State  
20 police did observe the defendant going in and out of  
21 his residence. They maintained surveillance on his  
22 residence. He was the one in the residence because  
23 when they executed the warrant there was nobody else

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1 home, and under that circumstance -- well, not  
2 conceding that he had to be home to constructively  
3 possess them, he was there by himself that day and  
4 the State would assert that that is sufficient for a  
5 question for the jury at least.

6 THE COURT: All right. Mr. Schmid, your  
7 response to the issue regarding the ammunition?

8 MR. SCHMID: With respect to the  
9 ammunition, Your Honor, I am reviewing 1448 now.  
10 And as I review sub (c), there does not appear to be  
11 a specific evidence to indicate that the ammunition  
12 does not come under inert rounds or expended rounds,  
13 hulls, or casings. At no point during the testimony  
14 of State's witnesses did it in fact indicate unfired  
15 ammunition. And photographs are in evidence.

16 THE COURT: Any other comment,  
17 Mr. O'Connor?

18 MR. O'CONNOR: Just that the photographs  
19 do depict unfired ammunition specifically.

20 THE COURT: Depict what?

21 MR. O'CONNOR: Unfired ammunition, unspent  
22 ammunition, not casings or inert rounds.

23 MR. SCHMID: Actually, Your Honor, from my

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1 observation opening several of the boxes, there were  
2 numerous fired cartridges in the boxes.

3 MR. O'CONNOR: There were some in there,  
4 Your Honor, but one of the photographs entered into  
5 evidence specifically shows unspent ammunition.

6 MR. SCHMID: There isn't anything  
7 indicated in the photograph that says it is unspent,  
8 and there isn't anything in any of the testimony by  
9 any of the witnesses that says unspent.

10 THE COURT: All right. There is evidence  
11 of bullets in hulls or casings. The issue is  
12 whether or not the statutory definition of  
13 ammunition, which requires those items be live and  
14 capable of being fired, whether that has been  
15 established by the evidence.

16 I am convinced after review of the  
17 evidence that there is no testimony or evidence from  
18 which an inference can be made, that those items  
19 were live ammunition, which unlike the firearm,  
20 which may be operable or inoperable. It is  
21 expressly an element of the offense of possession of  
22 firearm ammunition that it be capable of being  
23 fired, and it shall not mean inert rounds or which

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1 the State has not disproved here.

2 Judgment of acquittal is entered as to  
3 that single count, which I believe is 0176, from  
4 that.

5 With regard to the remaining counts to  
6 which the defense has moved, there was evidence of  
7 the defendant's residence being observed by the  
8 State Police, then entered without any other persons  
9 entering or leaving the premises, and then all of  
10 the firearms which have been introduced into  
11 evidence and found therein. Possession may be sole  
12 or jointly, it may be actual or constructive.

13 The State has established sufficient  
14 evidence for that issue to go to the jury, and the  
15 motion for judgment of acquittal on those counts is  
16 denied.

17 Let's turn to jury instructions then. Are  
18 there any special requests for jury instructions by  
19 the defense?

20 MR. SCHMID: Your Honor, I believe it may  
21 be necessary to have the instruction concerning the  
22 stipulation and the nature of the stipulation for  
23 the jury.

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IT IS RELEVANT

1 THE COURT: Anything else?

2 MR. SCHMID: No, Your Honor.

3 THE COURT: Any special requests by the

4 State?

5 MR. O'CONNOR: Two things, Your Honor.

6 One is I would request an instruction with

7 respect to the firearm charges, that it is no

8 defense that a person doesn't know they are

9 prohibited from owning a weapon if a convicted

10 felon, or the other thing, which is something that I

11 spoke to Mr. Schmid about, is on each firearm there

12 was a label, a State police label, that stated that

13 the nature of the case was trafficking in

14 methamphetamine.

15 I had the State Police detective redact

16 that one line off of the label so it can't be read,

17 and I am not certain it warrants a redaction

18 instruction. It has never been brought to the

19 jury's attention. When I reviewed the evidence, I

20 don't believe you can read what is underneath it,

21 but I thought I would bring it to the Court's

22 attention.

23 Mr. Schmid is aware of it. I don't know

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1 if he is going to request an instruction in that

2 regard or not. Otherwise there are no other

3 redactions that I can think of with respect to this

4 case.

5 MR. SCHMID: Your Honor, there were no

6 overt mentions made to -- rather concerning anything

7 that was going to be omitted from an exhibit, and I

8 concluded that it would be better left alone. It is

9 not really that evident.

10 Essentially what happens is there is a

11 black line marked threw that particular line of each

12 of the evidence tags where it says "nature of case,"

13 and it is just blacked out. It was well done, and

14 isn't highly noticeable, and I had concluded not to

15 ask for an instruction rather than call that or have

16 the jury speculate, gee, what was redacted, and have

17 them start looking.

18 THE COURT: All right. I will give an

19 instruction on the effect of the stipulation, and I

20 will note for the record that Kipp versus State,

21 Delaware Supreme Court case decided in 1998,

22 704 A.2d 839, expressly provides that: To be guilty

23 of a violation of this section, a person need only

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I only possessed one gun!

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1 know that he or she possessed a weapon. This

2 section does not require a person to know that it

3 was criminal to do so.

4 And therefore, contemplating consistent

5 with that interpretation of the statute, which is

6 also consistent with my earlier ruling including

7 language in the charge that knowledge on the part of

8 the defendant that he is prohibited, he is a

9 prohibited person, is not required as part of the

10 description of that element.

11 Is that what you are asking for?

12 MR. O'CONNOR: Yes, Your Honor.

13 THE COURT: Any objection to that? Do you

14 object to form?

15 MR. SCHMID: No, Your Honor.

16 THE COURT: All right. I will have a copy

17 of the charge for you tomorrow prior to closings.

18 MR. O'CONNOR: Judge, on an unrelated

19 matter, ten o'clock was the time?

20 THE COURT: Yes.

21 Counsel, in the jury charge I am going to

22 read the indictment as amended with regard to the

23 counts remaining. For ease of reference, I am

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This was amended right after my trial. Now reads CHANGING V. STATE

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1 renumbering them one through fifteen. Any objection

2 to that?

3 MR. O'CONNOR: No, Your Honor.

4 MR. SCHMID: No objection.

5 \* \* \* \* \*

6 (Whereupon the proceedings in Chambers

7 were concluded.)

8 \* \* \* \* \*

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